Cuba. [illegible]

LAWS

OF

CUBA, PUERTO RICO, AND THE PHILIPPINES.

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
1899.

VOLUME II.

WASHINGTON:
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TRANSLATION

OF

THE MORTGAGE LAW

FOR

CUBA, PUERTO RICO, AND THE PHILIPPINES.

(1893.)

WAR DEPARTMENT,
1899.

WASHINGTON:
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MORTGAGE LAW

FOR

CUBA, PUERTO RICO AND THE PHILIPPINES.

TO THE CORTES

The mortgage law, which has been in force in the Peninsula for the past thirty years, was applied to the Antilles, with such changes as were indispensable for its adaptation to those islands, on May 1, 1880, and to the Philippines on December 1, 1889, reforming the laws regarding real property in those countries, and consequently giving a new impetus to land securities. Although this work is not without its imperfections, being human, the mortgage law must be looked upon as one of our most important legal works, and all that is fundamental therein, and even that which appears of less value, should be religiously respected as long as the results of experience and the necessity of reconciling it with the other legal measures in force permit its observance. This has been the rule adhered to by the Government in the preparation of the revision herewith submitted to the Cortes.

The Civil Code for the Colonies as well as for the Peninsula, among other special laws, left the mortgage law expressly in force, without eliminating from it, or diverting from itself entirely, provisions which by their nature would have corresponded to the Code had both originated at the same period. It was an inevitable necessity, therefore, to overcome the differences, and in the revision which took place with this object in view, it was concluded that the Code should prevail whenever a question arose, and not only support the structure of the mortgage law, but that said law should be the only one for all ultramarine provinces; and, further, that it should coincide, as far as possible, with the text of the Peninsular law, thus avoiding the confusion and practical difficulties which were noted in the quotations and references by reason of four different sets of numbers for the articles.

The necessity of harmonizing these differences between the law mentioned and the code is not the only motive which animates the government in presenting this plan. Experience and the especial conditions of real property in some of the ultramarine provinces also urgently suggest, and even demand, important amendments, which naturally, however, should retain the cardinal principles of the system.

The law having been enacted so that all real property should be recorded in authentic official books, it was at once observed that a considerable portion was not subjected to this beneficent rule, by which it could be freed from usury and its possession guaranteed. The taxes, the schedule of notarial and register's fees, and the complications as well as the requirements of form, made this object of the legislator unattainable. It was necessary to remove these obstacles, so that small properties could enjoy the advantages of credit. Furthermore, the omission of the record of deeds keeps from the registry a considerable portion of land, and as this evil can only be remedied by notices of possession, it is advisable to still further facilitate them, notwithstanding the undesirable features thereof, by permitting their conversion into absolute titles twenty years after their date. These two reforms have already been fully discussed by the Senate, and were approved in 1890, in order to incorporate them in the Peninsular law.

At that time another reform was also considered which had been urgently demanded. The old books of property, which were to be replaced by those created by the mortgage law, contained a multitude of liens and claims which had absolutely expired, but had not been canceled in a definite manner, thus depreciating the value of property without reason.

It was an urgent requisite of credit to declare those books without force as to third persons after a certain period, and it was therefore proposed that all persons who had any interest recorded in the same should transfer them to the new books if they desired the State to force third persons to respect them. By reenforcing this provision in giving greater scope to proceedings for clearing the title, the certificate of a register will indicate the legal status of the realty, thus giving contracts the security which they should enjoy.

But where the voice of experience has been heard with the greatest clamor against the law, demanding immediate relief, is where it refers to the procedure for making mortgage debts effective. Its crushing confusion, the uncertainty of results, and its incalculable cost restrain capital or suggest usurious conditions; sales and resales take the place of loans, with the object of avoiding all proceedings to the prejudice of the landowner; interest is stipulated which triplicates the capital loaned, and perhaps by the employment of other means the debtor is exposed to penal responsibility, converting the sanctity of laws enacted for the punishment of crimes into a vile instrument of avarice against the unfortunate. Distrust causes these means to be employed because the legal procedure does not satisfy the reasonable requisites of contracts, and to uproot these evils, to furnish land with the capital it needs, and to give the lender assurances of speedy and easy recovery of his loans, is the object of the most important reform proposed by the Government, suppressing proceedings which, without positively guaranteeing one's rights, destroy those most sacred. Previous appraise-

ment, uniformity of judicial action in all necessary investigations, suppression of all litigation, only one summons and the immediate sale by auction, are the basis of the new law. We have abolished suits, exemptions, letters requisitorial (exhortos), writs of attachment on the mortgaged property, proceedings in the nature of a demurrer, simultaneous auctions, and a great many other barriers in the path of the credit of realty, which had been placed with the best of intentions, but from which those in good faith were the only victims.

The special conditions existing in the ultramarine provinces have suggested other amendments, especially for the Island of Cuba. The reforms mentioned, equally useful for Puerto Rico and the Philippines, have been proposed in accordance with the crisis which is complained of with regard to the development of their credit on real property, but all of them would be worthless without the enactment of a measure which has been unanimously and most justly demanded, and which will in itself promote credit and prevent the repetition of the statement that in Cuba there as yet exist no mortgage regulations. This measure consists in abolishing the time, which has been indefinitely extended by royal decree of May 6, 1882, during which mortgages as well as other implied liens remain in force; these secret incumbrances, which do not appear in the registry, rendering all contracts involving realty hazardous, although they appear completely unencumbered according to the record. The time which was just and reasonable during a period of transition, and which was allowed in the Peninsula, Puerto Rico, and the Philippines, has already lapsed, while it is still running in Cuba, and has been for the past thirteen years, placing all parties to contracts in a state of uncertainty and causing them to be suspicious. The new law will fix a time for its termination, which will not be extended.

Credit of land requires more. On account of the provisions of articles 73 to 78 of the Cuban mortgage law loans are now reduced to 50 per cent of the value of estates, said articles reserving the other half for the security of subsequent lenders, who may wish to aid the cultivation and production of the soil. These articles place such obstacles and difficulties in the way of such loans, incorrectly called "agricultural loans" (refaccionarios), that, according to all information, the privilege is not made use of in practice, and in point of fact this compensation for the evil suffered by mortgage contract is lacking. To reestablish credit of lands to its fullest extent by the abolition of these articles is to comply with a legitimate demand of Cuban land owners whom it is intended to protect.

The law fills another requisite. To facilitate the acquisition on time payments of machines and other agricultural implements it is necessary that the simple attachment to the soil of an article sold, when the vendor has not yet been fully paid, should not turn it over to the mercy of prior mortgage creditors, inasmuch as subsequent acquisitions of

the debtor are not security for the fulfillment of their contracts. The provisions of paragraph 2 of article 112 of the new law correct this fault, which was a great impediment in the way of a perfect and strong reestablishment of Cuban industries.

Two other reforms which are demanded by that island have no appropriate place in the mortgage law, and will, therefore, have to be otherwise disposed of, viz, loans which are secured only by the products and the survey of estates owned by tenants in common. This law, embracing real property only, can not be applied to products when considered apart from the soil itself; agricultural credit can not be considered as embraced by a credit of the land. The survey of estates of tenants in common is in that island a question of as great difficulty in its social aspect as the question of emphyteusis in Galicia, and pertains to the Civil Code and the Code of Procedure, and not to a law which presupposes and requires that the property already is surveyed to give publicity and permanent stability to its legal situation.

An attempt was made some time ago to apply the registry system known by the name of "Acta Torrens" to the Philippines, but the confusion which would attend a radical change of system within four years of the establishment of the present one, and when the last quarterly statistics show that it is becoming customary and generalized, and together with an examination of the former system with regard to the condition of property in the Philippines, the Government has desisted from that intention, which, furthermore, could not be effected without making considerable changes in civil law and without involving the public treasury in hazardous and indefinite responsibilities. Our mortgage law, which already had a large number of precedents in the Archipelago, can be reformed by slight amendments, which, together with the reforms of the provisions regarding the readjustment of royal patrimonies, will pave the way for the advent of the institutions of credit for lands, which is based on a sound mortgage law, and legally recorded deeds, which define and secure all interests in the land.

It would be superfluous to repeat here the benefits which may be expected in Puerto Rico through these reforms. The institution of the registry is running smoothly there, without causing complaints, and now, in giving greater power and clearness to the same system, it is logical to expect that its salutary effects will increase.

To undertake the reforms mentioned, the Government depended on various legal authorizations, but the vote of the Cortes is necessary to put an end to implied mortgages, according to the text of article 3 of the royal decree of May 6, 1882. It appears desirable, therefore, to go beyond the limit which those authorizations seemed to fix; and, even if such reasons did not exist, the gravity of the question and the special respect which provisions regulated by private civil legislation deserve would have induced the Government to submit the reform to the Cortes, notwithstanding its urgent need for the island of Cuba. The

plan which is herewith presented has been compiled, with the full approval of the Committee on Codes for the Colonies, in its essential points as well as in the method adopted to facilitate parliamentary deliberations, and to reconcile formalities of law with the necessity so urgently impressed by Cuba. If the Cortes will condescend to pass this new law, containing all that has been approved by the Senate, for the Peninsula, as well as the changes derived from the Civil Code, and if His Majesty will sanction the same, the Colonies will enjoy in advance remedies which are for the most part desired by the whole national territory.

In accordance with these remarks, with the authority of His Majesty and with the approval of the Council of Ministers, the undersigned has the honor to submit for the approval of the Cortes the following

PROPOSED LAW.

Article first and last. The Government is hereby authorized to put into effect the law submitted by the Colonial Minister, with the approval of the Committee on Codes, amending the mortgage law for Cuba, Puerto Rico, and the Philippines.

Madrid, May 26, 1893.

The Colonial Minister,

ANTONIO MAURA Y MONTANER.

MORTGAGE LAW FOR THE COLONIES.

TITLE I.

INSTRUMENTS REQUIRING RECORD.

ARTICLE 1. Registries of real estate shall be located in all towns where they have been established by law. Registries can not be abolished nor created, nor can the present territorial limits of any one of them be changed, without provision of law.

In every Registry shall be recorded the instruments relative to the estates situated within their territorial limits. If an estate is situated within the limits of two or more Registries, it shall be recorded in all of them.

ART. 2. In the Registries mentioned in the preceding article shall be recorded:

1. Instruments transferring or declaring ownership of realty, or of property rights thereto.

2. Instruments by which rights of use, use and occupancy, emphyteusis, mortgage, annuity (censo), servitudes, and any others by which estates are created, acknowledged, modified, or extinguished.

3. Instruments or contracts by virtue of which real property or property rights are conveyed to a person, although it is with the obligation of transferring them to others or of investing their value for specified purposes.

4. Writs declaring the legal incapacity for administration, or the presumption of death of absentees, or injunction, or in anyway altering the civil capacity of persons with regard to the free disposition of their property.

5. Contracts for the lease of real property for a period exceeding six years, or such contracts on which rent has been paid in advance for three or more years, or, if having neither of these conditions, they contain a special covenant by which record thereof is required.

6. Title deeds of real property or property rights owned or administered by the State, or by civil or ecclesiastical corporations, subject to the provisions of laws or regulations.

ART. 3. To permit the record of the title deeds mentioned in the preceding article, they must be in the shape of a public document, writ, or certified document, issued by a judicial authority or by the Government or its agents, in the form prescribed by the regulations.

Notwithstanding the provisions of the preceding paragraph, those who have the ownership or possession of property rights recorded in their favor, the individual value of which does not exceed 300 pesos, may alienate or mortgage them by appearing before the proper notary with the grantee or mortgagee and two witnesses. The original draft of the contract shall necessarily contain a description of the realty and the enumeration of liens or incumbrances, if there be any, the names and surnames, the status (whether married or single), profession, and residence of the grantor and of the grantee, as well as the consideration involved.

The original contract, which should be executed on official paper, must be recorded in the Registry of the notary certifying to it. The copy, executed on paper of the lowest class (or, if it has been made on common paper, a stamp of the same class will have to be affixed thereto), shall be presented to the Registry of property for record, as it must serve as the title of the grantee.

Partitions of inheritances, which do not exceed 2,500 pesos in value, may be effected by all the participants or their representatives appearing before a notary, who shall execute an instrument containing descriptions of the estates, their award to each interested person, the covenants and limitations with which they are made, and other necessary requisites regarding the personality of the interested persons, so that said instrument may be recorded. The said document shall have to be signed by all the interested parties, or by two witnesses procured for this purpose. If anyone of the interested parties should not know how or should not be able to sign, it shall be done in his name by either of the witnesses, the notary stating this circumstance in the instrument. Should the notary not be acquainted with the interested parties, he shall demand that two witnesses known to him shall identify them, who may be the same who take part in the execution of the instrument.

The duplicate of this instrument, a copy of which shall be given to each one of the interested parties, shall be their title for record, the original being filed in the notary's register.

When, according to law, an approval of the partition or awards is necessary, it shall be the duty of the notary, under his own responsibility, to send the original instrument to the Court of First Instance of the subdistrict, so that this requisite may be filled without any further delay than its posting in the office of the secretary of the court for the period of eight days. It shall then be returned, also officially and without charging any fees, to the notary who sent it, with a decree approving the partition.

Any objection made by one of the interested parties shall be heard before the same court in conformity with the regulations established for oral trials by the Law of Civil Procedure.

When, for the execution of the instrument referred to in the preceding paragraphs, a previous declaration of heirs is necessary, the notary

shall demand of the interested parties the documents necessary to make said declaration, and the presence of the witnesses who shall testify as to the nonexistence of a will. It shall be his duty to send the record formed in this manner to the Court of First Instance, which, with the consent of the Department of Public Prosecution, shall thereupon issue the corresponding decree of heirship after such announcements or edicts as may be necessary, returning the original to the notary from whom it was received, who shall file it in his proper register, as has been before stated.

The fee for the above-mentioned procedure shall be 7.50 pesos; for the execution of the instrument of partition, if the total value of the estate does not exceed 1,000 pesos, the fee shall be 5 pesos; if the value exceeds 1,000 but is not more than 1,500, 7.50 pesos; from 1,500 to 2,000, 10 pesos; for the copies issued to each interested party 25 cents a folio shall be charged.

The paper to be used for the originals as well as the copies of the record above mentioned shall be stamped paper of the lowest class.

ART. 4. For the effects of this law, transferable public offices (oficios públicos) conferred by the Crown, securities of public debt, or shares of banks or mercantile companies, even if they are negotiable, and those of ordinary partnerships, whatever be their kind, shall not be considered as real property.

ART. 5. The documents or deeds mentioned in article 2, which have been executed in foreign countries, and which are effectual in Spain in accordance with the laws, and such decrees as are mentioned in No. 4 of the same article, issued by foreign courts, which must be complied with in the Kingdom in accordance with the Law of Civil Procedure, shall also be recorded in the Registry.

TITLE II.

RECORD, ITS METHOD AND ITS EFFECTS.

ART. 6. The record of instruments in the Registry may be demanded indiscriminately:

By the person conveying the interest;

By the person acquiring the same;

By any person interested in securing the interest which is to be recorded;

By the person who is legally authorized to represent any of the above.

ART. 7. When in any instrument or contract any property interest in real estate is reserved to persons who were not parties to the same, the notary who executes the deed, or, in the absence of a notary, the official who may issue it, shall require the record of the said property right whenever the interests of said persons appear from the instrument itself, or from the documents and proceedings upon which its execution was based.

If the instrument or contract is subject to record, and this has been requested, particular mention must be made therein of the property right reserved, and of the persons in whose favor the reservation has been made.

ART. 8. Each estate which is recorded for the first time in the Registries shall be marked with a distinct and correlative number.

The records corresponding to each estate shall be marked by another correlative and special numeration.

ART. 9. Every record made in the Registry shall contain the following details:

1. The nature, location, and bounds of the realty which is the subject of record, or which is affected by the interest which is to be recorded, its superficial area measured according to the standard used in the country, and its equivalent in the metrical system, and its name and number, if they appear in the deed.

2. The nature, extension, conditions, and liens of any kind, of the interest recorded and its value, if it appear in the deed.

3. The nature, extension, conditions, and liens of the interest on which is created that which is the subject of record.

4. The nature of the instrument which is to be recorded and its date.

5. The name and surname of the person, if it is an individual, or, if not, the name of the corporation, or the names of all the parties interested in whose favor the record is made.

6. The name and surname of the person, or the name of the corporation, or of the legal person who is the last owner of the interests or estates which are to be recorded.

7. The name and location of the court, notary, or official who executes the instrument which is to be recorded.

8. The date of the presentation of the instrument to the Registry, with a statement of the time.

9. The conformity of the record with the copy of the instrument from which it was taken, and if the latter is one of those which are to be kept in the office of the Registry, the *liber* in which it is entered will also be indicated.

10. The date of the record and the full signature of the Register.

ART. 10. In the record of contracts involving cash considerations or transfers thereof the amount involved shall be mentioned, as well as the manner in which the payment was made or agreed to.

ART. 11. If the record be one transferring ownership, it shall indicate whether the price of this transfer was paid for in cash or in installments; in the former case, if the whole price was paid or a part thereof, and in the latter, the manner and terms agreed to for payment.

Similar details shall be expressed if the transfer of ownership is made in consideration of an exchange, or awarded in payment, and whether either of the grantees is to allow the other any difference in money or goods.

ART. 12. The records of mortgage debts shall in every instance contain the value of the obligation secured and of the interest, if any has been stipulated, and if none has been stipulated, it shall not be considered secured by the mortgage according to the regulations prescribed by the present law.

ART. 13. Records of servitudes shall be made:

1. On the page reserved for record of servient estates.
2. On the page reserved for record of dominant estates.

ART. 14. The entries of trusts shall be made at once in the name of the trustees.

ART. 15. The recording of the decrees mentioned in No. 4 of article 2, and in article 5 of this law, and of the record of cautionary notices of the suits mentioned in No. 5 of article 42 shall clearly state the nature of the legal incapacity which appears from said decrees or suits.

ART. 16. The compliance or noncompliance with conditions precedent, and the nonfulfillment of conditions subsequent, or conditions involving recision, contained in recorded instruments or contracts, shall be recorded in the Registry by means of a marginal note.

The payment of any sum made by the grantee, after the record, on account of the purchase price or in full liquidation thereof, or to cover the difference between an exchange, or in the award in payment, shall also be recorded by means of a marginal note, provided the interested parties request it, or if it has been so ordered by the court or judge.

The fulfillment of conditions subsequent or conditions involving recision, shall appear by means of a new record in favor of the person having the right thereto.

ART. 17. After any instrument transferring the ownership or possession of realty, or of property rights thereto, has been recorded or a cautionary notice thereof made in the Registry, no other instrument of the name or of a previous date may be recorded or noted, by which the ownership of the same estate or property right is transferred or encumbered.

If only the presentation of the instrument transferring ownership or possession has been recorded, no other deed of the kind previously mentioned may be recorded or noted for the period of thirty days following the date of said record.

ART. 18. Registers shall determine, under their responsibility, the legality of the documents by virtue of which the record is requested, and the capacity of the parties interested by what appears from said documents.

All the documents issued by judicial authorities shall also be determined by them under their responsibility, and for the sole purpose of admitting, suspending, or refusing their record or entry.

There shall be no further remedies than those mentioned in this law against the suspension or refusal of a record or cautionary notice, judges or courts by virtue of judicial documents not being permitted to compel the Registers in any other manner to record or enter.

ART. 19. Should the Register perceive any error with regard to the legal form of the instrument, or as to the capacity of the parties thereto, he shall advise the persons requesting the record thereof, so that, if they wish it, they may withdraw the instrument and make the necessary corrections within the time of the effectiveness of the entry of presentation, according to article 17; and if they do not withdraw the instrument and correct the error to the satisfaction of the Register he shall return the document, so that the necessary steps may be taken without prejudice to making the cautionary notice required by article 42, No. 8, if it is expressly requested.

In case the cautionary notice is not made, the entry of presentation of the deed shall continue effectual during the thirty days above mentioned.

The regulations shall explicitly describe the manner of proceeding in cases in which the requested record or entry is suspended or refused, by virtue of documents issued by judicial authorities.

ART. 20. To record or enter instruments transferring or encumbering the ownership or possession of real property or property rights, the interest of the person conveying it, or in whose name the transfer or encumbrance is made, must be previously recorded.

Registers shall refuse to record said instruments as long as this requisite has not been complied with, being directly responsible for the damage they may cause third parties by the violation of this provision.

However, they may record without this requisite all deeds executed by persons who have acquired an interest in the same property before the day on which the mortgage law was put into operation, provided they justify their title with trustworthy documents, and the same interest is not recorded in favor of another person; but in the record requested the essential circumstances of said title will be indicated, which shall be taken from the documents necessary for this purpose.

Registers shall refuse the requested record, if said interest is recorded in favor of a person other than the one executing the transfer or encumbrance.

Should the interest mentioned not be recorded in favor of any other person, and it is not proven that the grantor acquired it before the date mentioned, the Registers shall enter a cautionary notice at the request of the interested party, which shall be effectual during the period stated in article 96 of this law.

ART. 21. Public copies of instruments or contracts which require record shall at least contain all the details which the record must contain, or otherwise be null, relating to the persons of the parties thereto, to the estates, or to the recorded interests.

The owners of the real property or property rights acquired by any general or special instrument which does not mention and describe them individually, may obtain their record by presenting said instrument with the document, if there be one, which proves that they are the ones to whom the transfer was made, justified by any other trustworthy

document showing that the property which it is desired to record is embraced in said instrument.

ART. 22. The notary who omits anything preventing the entry of the instrument or contract, in accordance with the provisions of the preceding article, shall, if it is possible to do so, repair his omission by issuing a new deed at his own cost, and in any case indemnifying the interested parties for the damage caused by his error.

ART. 23. The instruments mentioned in articles 2 and 5 which are not duly recorded or entered in the Registry can not prejudice third persons.

The record of real property and property rights, acquired through an inheritance or legacy, shall not prejudice third persons until five years have elapsed since the date thereof, excepting in cases of testate or intestate inheritances, legacies and additions thereto (mejoras), when left to legal heirs.

In the award of specific realty in an inheritance or general assignment to a person having the right thereto, to a creditor, or to any third person, with the obligation of devoting its value to the payment of debts or charges on the same inheritance or general assignment, the conditions under which the property has been awarded shall be entered when it is recorded in the name of the person to whom the property has been awarded, and it shall have the effects which this law establishes in No. 1 of article 37.

The other property of the inheritance or general assignment shall by this act be relieved of all responsibility, although only to the prejudice of third persons, nothwithstanding that the debts of the inheritance or general assignment appear in their records. When no specific property has been awarded for the payment of debts, all the property of the inheritance or general assignment shall be relieved of all responsibility to the prejudice of third persons, even when the registry shows the existence of debts.

ART. 24. The instruments recorded shall also be effectual against creditors specially privileged by common legislation.

ART. 25. Recorded instruments shall be effectual against third persons only from the day of record.

ART. 26. To determine which of two records, bearing the same date and relating to the same estate, shall have preference, the hour of the presentation of the respective instruments in the Registry shall be taken into consideration.

ART. 27. For the purposes of this law, those who have not participated in the recorded instrument or contract shall be considered as third persons.

ART. 28. The date of the entry of presentation, which must appear in the record itself, shall be considered the date thereof for all intents and purposes.

ART. 29. The ownership of any other property right which is expressly mentioned in the records or cautionary notices, although it does not

appear in the Registry as a separate and special entry, shall be effectual against third persons from the date of the entry of presentation of the respective instrument.

The provisions of the preceding paragraph must not be understood as interfering with the obligation of specially recording the rights referred to, and with the responsibility incurred by persons who, in certain cases, must demand the record.

ART. 30. The records of the instrument mentioned in articles 2 and 5 shall be null if they do not contain the details mentioned in Nos. 1, 2, 3, 4, 5, 6, and 8 of article 9, and in No. 1 of article 13.

ART. 31. The nullity of the records treated of in the preceding article shall not prejudice any interest previously acquired by a third person, who was not a party to the recorded instrument or contract.

ART. 32. The record shall be understood to lack some of the details embraced in the numbers and articles mentioned in article 30, not only when all the requisites mentioned in each one of said numbers and articles is not embraced therein, but also when they have been expressed so inaccurately that a third person could thereby be led into error, as to the object of the fact itself, and suffer loss in consequence thereof.

When the inaccuracy is not material, as provided by the preceding article, or when the omission does not embrace all the details mentioned in some of the numbers and articles referred to, the record shall be declared null only when it causes some error or loss.

ART. 33. The record of instruments or contracts which are null in accordance with the law are not validated thereby.

ART. 34. Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by a person who, according to the Registry, has a right thereto, shall not be invalidated with regard to third persons, after they have once been recorded, although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the Registry.

Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in article 389.

The provisions of this article may at no time be applied to the instrument recorded in accordance with the provisions of article 390, unless the prescription has validated or secured the interest referred to therein.

ART. 35. A prescription which does not require a just title shall not prejudice third persons if its possessory title is not recorded.

Neither shall a third person be prejudiced by a prescription which requires a just title if the latter is not recorded.

In either case the time of the prescription shall begin from the date of the record.

As to the legal owner of the realty or interest which is being prescribed, the title shall be determined and the time computed in accordance with common law.

ART. 36. Suits for recision or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law.

ART. 37. Exceptions to the rule contained in the preceding article are:

1. Suits for recision or determination of title which are due to the causes plainly expressed in the Registry.

2. Suits for recision of conveyances made for the purpose of defrauding creditors in the following cases:

When the second conveyance has been made without consideration.

When the third person was a party to the fraud.

In both cases the third person shall not be prejudiced by any action for recision not brought within one year from the time of the fraudulent conveyance.

ART. 38. In consequence of the provisions of article 36, no instruments or contracts shall be annulled or rescinded to the prejudice of third persons who may have had their interests recorded for any of the following reasons:

1. For the revocation of gifts in such cases as are permitted by law, except when the donee does not comply with conditions entered in the Registry.

2. For the legal retraction of the sale, or the legal preference (tanteo) in an emphyteusis.

3. For not having paid the full price of the article sold, or a portion thereof, if it does not appear by the record that the payment has been postponed.

4. For the resale of an article, when either the sale or resale has not been recorded.

5. For willful damage (lesion) in cases 1 and 2 of article 1291 of the Civil Code.

6. For conveyances made for the purpose of defrauding creditors, with the exception of the cases mentioned in the preceding article.

7. For any other actions, which the laws or special statutes permit certain persons to bring for the purpose of rescinding contracts for reasons not specifically stated in the record.

In every case that the suit for recision or determination of title can not be instituted against the third person, in accordance with the provisions of this article, the corresponding personal action may be brought to recover from the person who may have been the cause thereof, indemnity for the injuries and damages suffered.

ART. 39. By a conveyance without consideration to defraud creditors in case 1, No. 2 of article 37, shall be understood not only the one by gift or cession of a right, but also any conveyance, creation, or renunciation which the debtor makes of some property right within the periods respectively mentioned in the common or in the proper commercial laws, for the recision of conveyances made to defraud creditors, provided

there was no price or its equivalent, or any preexisting obligation which had fallen due.

ART. 40. In accordance with the provisions of the preceding article, and providing the circumstances mentioned exist, the following may be revoked:

1. Annuities (censos), emphyteusis, servitudes, uses, and other property rights created by the debtor.

2. The creation of dowries or gifts by reason of marriage, in favor of the wife, children, or strangers.

3. Conveyances of real property for the payment of debts which have not yet fallen due.

4. Voluntary mortgages created for the security of debts previously contracted without this guaranty, and which have not yet fallen due, provided the conditions of the principal obligation are not thereby encumbered.

5. Any contract by which the debtor transfers or renounces expressly or impliedly any property right.

It shall be understood that no price or its equivalent figures in said contracts, when the notary does not certify as to its delivery or if the contracting parties acknowledge that the delivery had previously taken place, and the fact is not proven or it is shown that it must be embraced in case No. 3 of this article.

ART. 41. The owner of the realty or of the property right shall be considered a party to the fraudulent conveyance in the second case, No. 2 of article 37:

1. When it is proven that he knew the purpose of making said conveyance, and that he was a party to it in the character of last owner or in any other capacity.

2. When he acquired his interest, either directly from the debtor or from a subsequent purchaser, for half or less than half its true value.

3. When any kind of false statements or subterfuge has been employed in the contract executed by the debtor, and it is proven that the owner had notice or took advantage thereof.

TITLE III.

CAUTIONARY NOTICES.

ART. 42. Cautionary notices of their respective interests in the corresponding public Registries may be demanded by:

1. The person who enters suit for the ownership of the real property, or for the creation, declaration, modification, or extinction of any property right.

2. The person who, in accordance with the law, obtains a writ of attachment against the real property of the debtor.

3. The person who, in any trial, obtains a decree against the defendant, which must be carried out in the manner prescribed by title 8 of the Law of Civil Procedure.

4. The person who enters a declaratory suit for the fulfillment of any obligation, and who, in accordance with the laws, obtains a decree ordering the sequestration or prohibiting the alienation of the real property.

5. The person who enters a suit for the purpose of obtaining any of the decrees mentioned in No. 4 of article 2 of this law.

6. The widower by the right granted him by article 838 of the Civil Code.

7. The legatee who, according to the law, has no right to institute testamentary proceedings.

8. The agricultural creditor, during the time the work lasts which is the object of the loan.

9. The person who presents an instrument to the Registry which can not be definitely recorded on account of some omission which may be repaired, or on account of the incapacity of the Register.

10. The person who in any other case has a right to demand a cautionary notice in accordance with the provisions of this law.

ART. 43. In the case of No. 1 of the preceding article, no cautionary notice may be made unless it is so ordered by a judicial decree issued at the instance of a person having a right thereto and by virtue of a document sufficient in the opinion of the judge.

In the case of No. 2 of the same article, the record shall be obligatory, according to the provisions of article 1435 of the Law of Civil Procedure, in force in the Philippines, and article 1451 of the law which is in force in Cuba and Puerto Rico.

In the case of No. 5 of the said preceding article, the entry must also be made by virtue of a judicial decree, which may be issued by reason of the duty to do so, when there are no persons requesting it, provided the court, in its opinion, deems said entry advisable to insure the effect of any judgment which may be rendered in the suit.

ART. 44. The creditor who obtains an entry in his favor in cases Nos. 2, 3, and 4, of article 42, shall have preference, only with regard to the property entered, over those who have another claim against the same debtor, contracted subsequently to said entry.

ART. 45. In the case No. 6 of article 42, the widower may demand a cautionary notice of the right of use which belongs to him, against all the realty of the inheritance, in accordance with the procedure indicated in articles 55, 56, and 57, of this law.

ART. 46. The legatee, who has no right, according to the law, to institute testamentary proceedings, may at any time request a cautionary notice against the goods bequeathed him, if they consist of specific personal property.

If the legacy is not specific, the legatee may demand a record of its value against any of the realty of the inheritance sufficient to cover it, within 180 days following the death of the testator.

In either case the entry shall be made by presenting in the Registry the instrument on which the interest of the legatee is based.

The legatee of specific personal property, or of credits, or annuities arising therefrom, can procure a cautionary notice against such property only.

ART. 47. The legatee of goods or money can not demand their entry against real property which has been expressly bequeathed to others.

ART. 48. No legatee of goods or money who has a cautionary notice in his favor can prevent another legatee of the same kind from obtaining another entry within the period allowed by law in his favor against the property which has already been entered.

ART. 49. If the heir wishes to enter, in his name, the goods inherited within the 180 days mentioned, and there is no legal obstacle thereto, he may do so, provided that all the legatees previously renounce, by public deed, their right to entry, or, in case no express renunciation is made, the same legatees are notified thirty days beforehand of the request of the heir, so that they may make use of their privilege within said period, if they wish to do so.

This notification shall be made in accordance with the provisions of articles 254, 255, 258, and 509 of the Law of Civil Procedure in force in the Philippines, and 270, 271, 274, and 525 of the one in force in Cuba and Puerto Rico.

If the identity of the legatees is in doubt, the judge or court shall order that a cautionary notice of their legacy be made, either at the instance of the heir himself, or at that of any other interested person, or by reason of a special duty.

The heir who requests a record in his favor of the property inherited, within the 180 days referred to, may at once have a cautionary notice thereof made.

This entry shall not be converted into a definite record until the legatees have expressly or impliedly renounced the entry of their legacies, and it shall be canceled with regard to the property against which the same legatees request a cautionary notice to be filed in accordance with their rights.

ART. 50. The legatee who obtains a cautionary notice shall be preferred to the creditors of the heir who may have accepted the inheritance without the benefit of inventory, and to any other who, subsequent to the date of said entry, acquires some interest in the property entered; but it is to be understood that this preference is only in so far as the value of said property is concerned.

ART. 51. The cautionary notice shall give preference, with regard to the value of the entered property, to the legatees who may have made use of their right within the 180 days mentioned in article 46 over those who do not make use of their privilege within the same period.

Those who have secured said entry within this period shall have no preference over each other, but without prejudice to that corresponding to the specific legatee, in accordance with common law, over other legatees, in this instance as well as in the case of his not having requested its entry.

ART. 52. The legatee who is not specific, and allows the period mentioned in article 46 to elapse without making use of his privilege, may only later on demand a cautionary notice against the property of the inheritance which is in the hands of the heir; but this shall have no effect against any person who may have previously acquired and recorded some interest in the inherited property.

ART. 53. The legatee who, after the 180 days have elapsed, should request a cautionary notice against the hereditary property which is in the hands of the heir, shall not thereby acquire any preference over the other legatees who may have omitted this formality, nor shall he gain any other advantage than that of recovering his legacy before any creditor of the heir subsequently acquiring some interest in the entered property.

ART. 54. An entry, requested after this period has elapsed, may be made against property noted within this period in favor of another legatee, provided they are in possession of the heir; but the legatee who obtains it can recover his legacy only to the extent of the value of the property after the claims of those who had their entry made within said period have been satisfied.

ART. 55. A cautionary notice of legacies and of agricultural loans made shall not be judicially decreed without previous proceedings and hearing of those who may have any interest in preventing it.

ART. 56. The cautionary notice of legacies may be made by virtue of an agreement between the parties or by a judicial decree.

ART. 57. When the entry must be made by virtue of a judicial decree, the legatee shall appear before the judge or court having jurisdiction of the will establishing his right, presenting the documents on which it is founded, and specifying the property which he desires to have entered. The court, in an oral trial, and in accordance with the statements of the heir and said legatee, shall render a decision, either refusing or complying with the request, in accordance with the procedure established by chapter 4, title 2, book 2 of the Law of Civil Procedure.

In the latter case it shall specify the property which is to be entered, and shall send the respective communication to the Register, inclosing a literal copy of its decision, for compliance.

An appeal may be taken from this decision to the Audiencia of the district.

ART. 58. If the entry has been judicially requested by one legatee and a second one appears with a similar claim on the same property, he shall also be heard at the trial.

ART. 59. The agricultural creditor may request an entry against the estate which is the subject of the loan for the amounts which he advanced in one payment or in successive ones, presenting the written contract he may have in any legal manner made with the debtor.

This entry shall have, with regard to the agricultural loan, all the effects of a mortgage.

ART. 60. It shall not be necessary that the instruments by virtue of which the cautionary notice of agricultural loans is requested should specify the exact amount of money or effects these credits consist of, and it shall be sufficient for them to contain enough details to liquidate them when the works contracted for are terminated.

ART. 61. If the estate which is the subject of the agricultural loan should be subject to recorded real property agreements, the entry can only be made by virtue of a unanimous agreement, by means of a public instrument between the owner and the persons in whose favor said agreements are created, on the object of the improvement itself, and the value of the estate before beginning the works, or by virtue of a judicial decree issued in a proceeding for the purpose of fixing said value, and in which all the parties indicated are cited.

ART. 62. If any of those in whose favor the real-property agreements mentioned in the preceding article are entered is not a person whose identity is known, or is absent and his residence is unknown, or he refuses his consent thereto, the entry may only be made by virtue of a judicial decree.

ART. 63. The value at which the estate which is the subject of the agricultural loan is appraised, before the work is begun, shall appear in the record of the debt.

ART. 64. The persons in whose favor property rights are created in the estate which is the subject of the agricultural loan, the value of which appears in the form prescribed by the preceding articles, shall reserve their rights of preference with regard to the agricultural creditor, but only to the extent of the appraised value of the estate.

The agricultural creditor shall be considered as a mortgagee, with respect to the excess of the value of the estate over the obligations mentioned above, and in any case, with respect to the difference between the price at which the estate was appraised before the improvement and its value at the time of the judicial conveyance.

ART. 65. Errors which may be remedied are such as affect the validity of the instrument itself, without necessarily producing the nullity of the obligation created thereby.

Should the instrument contain any of these errors, the Register shall suspend its record, and shall enter a cautionary notice thereof if the person presenting the instrument request it.

Errors which can not be corrected are such as necessarily produce the nullity of the obligation.

If the instrument should not contain any error of this kind, its record will be refused, and no cautionary notice can be entered.

ART. 66. The parties interested may object to administrative officers against the decision respecting the instrument made by the Register, without prejudice to applying, if they wish to do so, to the courts of justice to discuss and contend among themselves regarding the validity or nullity of the documents or of the obligation. In case record is

suspended on account of errors in the instrument which may be corrected, and the cautionary notice is not requested, the interested parties may correct the errors within the thirty days during which the entry of presentation is effective. If the cautionary notice is entered, they may be corrected during the time the latter remains in force, according to article 96.

If record has been refused, and the interested person should enter a suit before the courts of justice to have established the validity of the instrument or obligation, within the thirty days following the date of the record of presentation, he may demand entry of a cautionary notice of his suit, and the entry shall be antedated to conform with the date of the record of presentation.

After said period the cautionary notice of the suit shall be effectual only from its date.

In the case of appealing to administrative officers against the decision respecting the instrument, all the periods mentioned in the two preceding paragraphs shall be suspended from the day the appeal is entered until its final resolution.

ART. 67. In case an entry is made because the record can not take place on account of an error which can be corrected, the interested party may demand that the Register give him a copy of said entry, authenticated by his signature, in which shall appear whether there are pending or not any other instruments relative to the same realty, and, if so, what they are.

ART. 68. Decrees ordering or refusing a cautionary notice in cases 1, 5, and 6 of article 42 may be appealed from for review only (un solo efecto).

In case No. 7 of the same article the decree may be appealed from for review and also to stay proceedings (ambos efectos) when the person who has some prior property right in the recorded realty has opposed the entry.

ART. 69. The person who may demand a cautionary notice of an interest and should not do so within the period prescribed for this purpose can not have it entered subsequently in his favor to the prejudice of a third person who may have recorded the same interest, having acquired it from a person who, according to the Registry, was competent to convey it.

ART. 70. When the cautionary notice of an interest is converted into a definite record of the same, it shall be effectual from the date of its entry.

ART. 71. The real property or property rights which are entered may be conveyed or encumbered, but without prejudice to the right of the person in whose favor the entry was made.

If the real property or property rights of which cautionary entries have been made in accordance with article 42, Nos. 2 and 3, should be awarded to a claimant by virtue of a judgment rendered in a suit, or if it were necessary to offer them at public sale, a notice of said award

or advertisement shall be transmitted to the person who may have acquired said property or rights during the pendency of the suit.

Said notice must be issued at the instance of the plaintiff after the award has been finally decreed or before the sale in the judicial proceedings takes place, observing the provisions of articles 260 to 269 of the Law of Civil Procedure in force in the Antilles, and articles 244 to 253 of the one in force in the Philippines.

After the notice referred to in the preceding paragraph has been made the person notified may free the property in question by paying the amount mentioned in the entry to cover principal and costs; this must not be construed as meaning that he is obliged to pay a larger sum than that mentioned in the entry. Should he not do so within ten days, the record of his ownership shall be canceled in the Registry, as well as any other record that has been made after the entry, for which purpose the respective order shall be transmitted to the Register at the instance of the purchaser at the auction, or of the person to whom it has been awarded.

If the conveyance executed and recorded during the pendency of the suit relates to an estate, the ownership of which is demanded by virtue of a claim, a cautionary notice of which has been made in accordance with No. 1 of article 42 of this law, a certified copy of the final judgment in favor of the ownership of the plaintiff shall be a valid title deed by virtue of which this record may be canceled.

Final decrees of prohibition or declaring the legal incapacity of some person for administration, or by which his civil status with reference to the free disposition of his property is modified, shall be sufficient documents for the cancellation of records of conveyances executed during the period of the pendency of the suit instituted by the person who has been declared incapacitated, provided a cautionary notice of the claim, which is the basis of the decree, shall have been previously made in accordance with the provisions of article 42, No. 5.

ART. 72. Cautionary notices shall embrace the details required for record by articles 9, 10, 11, 12, and 13, in so far as they appear in the deeds or documents presented at the time said entries are requested.

Such as are caused by writs of attachment or sequestration shall express the reason for which they were granted and the amount of the obligation involved.

ART. 73. Any judicial decree ordering a cautionary notice, shall express the details which the latter must contain, according to the provisions of the preceding article, if it so appear from the deeds or documents, which were examined and were the basis of said decree.

When the entry must embrace all the property of a person, as in cases of incapacity or other similar cases, the Register shall enter all that are recorded in favor of such person.

In this case the property which is not recorded may also be entered, provided the judge or court so order it, and a previous record is made in favor of the owner of the property encumbered by said entry.

ART. 74. If the instruments or documents, by virtue of which the cautionary notice is requested judicially or extra judicially, should not contain the details required to make it valid, such details shall be stated by the interested parties in the petition in which they solicit the entry by common consent. Should there be no agreement, the person requesting the entry shall mention these details in the document in which he solicits it, and after hearing the other interested party as to its accuracy, the judge or court will decide as they deem proper.

ART. 75. Cautionary notices shall be made in the same part of the book where the record would be made, if the right entered should be converted into a recorded right.

ART. 76. A cautionary notice shall be null when the estate or interest entered, or the persons whom the entry concerns, or its date, can not be identified therefrom.

TITLE IV.

CANCELLATION OF THE RECORD AND OF THE ENTRY OF CAUTIONARY NOTICES.

ART. 77. Records are not extinguished as to third persons except by their cancellation, or by a record of the transfer of the ownership or property right recorded, to another person.

ART. 78. Cancellation of records or of cautionary notices may be total or partial.

ART. 79. A total cancellation may be demanded, and should be ordered in a proper case:

1. When the realty, which is the subject of the record, is completely extinguished.
2. When the recorded interest is also completely extinguished.
3. When the instrument, by virtue of which the record was made, is declared null.
4. When the nullity of the instrument is declared, because some essential requisite is lacking, in conformity with the provisions of article 30.

ART. 80. A partial cancellation may be demanded and should be decreed in a proper case:

1. When the realty, which is the subject of the record or cautionary notice, is diminished.
2. When the interest recorded is diminished in favor of the owner of the encumbered estate.

ART. 81. The enlargement of any recorded interest shall be the subject of a new entry, in which reference shall be made to the interest enlarged.

ART. 82. The records or cautionary notices made by virtue of a public document can not be canceled except by a final decree, from which there is no appeal in cassation pending, or by any other authenticated instrument or document, in which the person in whose favor the

record or entry has been made, or his legal representative or attorney signifies his consent to the cancellation.

Notwithstanding the provisions of the preceding paragraph, the records or entries referred to therein may be canceled without the requisites mentioned, when the interest recorded is extinguished by a declaration of law, or as a result of the recorded deed itself.

The records and entries made by virtue of judicial decrees may only be canceled by a final decree, in which the facts provided by the first paragraph of this article appear.

Records made to account for sums represented by negotiable instruments may be canceled through the presentation of a document executed by those who collected the debts, and from which it must appear that at the time of its execution the negotiable instruments were canceled, or by a petition signed by these parties and the debtor, to which the instruments referred to will be attached, duly perforated. If some of them have been lost, there shall be presented with the document or petition a copy of the judicial decree declaring their cancellation. The register must convince himself of the authenticity of the signatures and the identity of the persons who make the request.

Records made to account for sums represented by instruments executed to bearer can not be canceled if the extinction of all the secured obligations can not be proven, unless a copy of the judicial decree declaring the extinction of said obligations is presented.

In the case mentioned in the preceding paragraph, in order to issue the judicial decree, four calls of those having a right to oppose the cancellation must be made by means of public notices and advertisements in the official papers, each one for the period of six months.

ART. 83. If a record or entry has been created by virtue of a judicial decree, and the parties interested agree in a legal manner to cancel it, they shall apply to the judge or court of competent jurisdiction by means of a document expressing their wishes, and after its contents have been ratified, if there is or can be no prejudice against third persons, a decree ordering the cancellation shall be issued.

The judge or court shall also issue a similar decree, when it is deemed advisable, although the person in whose favor the entry or record has been made does not consent to the cancellation.

If the record or entry has been created by means of a public document and its cancellation is ordered, the person whom said cancellation prejudices not consenting thereto, the other interested party may enter a declaratory suit therefor.

ART. 84. The judge or court, or the one which has legally succeeded it in such matters, which may have ordered an entry of a cautionary notice, or its conversion into a definite record, shall be competent to order its cancellation.

ART. 85. A cautionary notice shall be canceled, not only when the interest entered is extinguished, but also when it is respectively agreed

to in the document or ordered in the decree that it be converted into a definite record.

If the entry has been made without a public document, and it is to be canceled without converting it into a definite record, the cancellation may also be made by means of documents similar to those which were presented when the entry was requested.

ART. 86. An entry in favor of a legatee who is not specific, shall be extinguished one year after its date.

If a legacy is not demandable at the end of ten months, the cautionary notice shall be considered effectual for two months longer, during which time it may be demanded.

ART. 87. If, before the cautionary notice is extinguished, it appears inefficient for the security of the legacy, on account of the liens or special conditions of the property entered, the legatee may demand that another be created against different property in the inheritance, provided such exists on which such incumbrance may be charged.

ART. 88. The legatee of rents or periodical annuities, absolutely imposed by the testator on any heir or on other legatees, but without declaring this obligation a personal one, shall have a right, within the period fixed in article 86, to demand that the cautionary notice which he may have made of his claim be converted into a record of mortgage.

ART. 89. The heir or legatee who has been charged with the annuity must create the mortgage mentioned in the preceding article on the same property which has been entered, if it is awarded to him, or on any other real property of the estate which may be awarded to him.

The choice, in any case, lies with the encumbered heir or legatee, and the person receiving the annuity must accept the mortgage offered by the former, provided it is sufficient and on property of the estate.

ART. 90. The person receiving the annuity, who has not filed a cautionary notice, may also, at any time, demand a record of his mortgage interest in the property of the estate which is in the possession of the heir, or which may have been awarded to the specially charged legatee or heir, provided he can do so by means of an efficient cautionary notice in accordance with the provisions of the preceding article.

This entry will only be effectual from its date.

ART. 91. The person receiving the annuity, who may have obtained a cautionary notice, can not demand a mortgage on any other property than that entered, if it is sufficient to secure the legacy. Should it not be sufficient, he may demand the creation of a mortgage on other property of the estate; but in the latter case he must act in conformity with the provisions contained in the second paragraph of the preceding article.

ART. 92. An entry in favor of an agricultural creditor shall be extinguished sixty days after the completion of the work which was the subject of the loan.

ART. 93. An agricultural creditor may convert his cautionary notice into a mortgage record if at the end of the period mentioned in the

preceding article his loan has not been repaid entirely, the time stipulated in the contract not having expired.

If the time stipulated for the payment has expired, the creditor may either extend it by converting the entry into a mortgage record, or may demand immediate payment, for which purpose the entry will have the effect of a mortgage.

ART. 94. To convert an entry of an agricultural credit into a record of mortgage, the former shall be liquidated, if it is not already so, and a public deed shall be executed.

ART. 95. Any questions which may arise between the creditor and the debtor as to the liquidation of the agricultural loan, or regarding the creation of the mortgage, shall be decided by means of a declaratory suit. During the trial and settlement of this suit the cautionary notice shall remain in force and effect.

ART. 96. An entry demanded because a record could not be made on account of errors which can be corrected in the deed presented, shall become null sixty days after its date.

This period may be extended to one hundred and eighty days for just cause, and by virtue of an administrative resolution of the president of the Audiencia of the district, provided the deed presented does not emanate from a judicial decree, in which case the time can only be extended by another similar decree.

ART. 97. The cancellation of the records of cautionary notices does not in and of itself extinguish, with regard to the parties, the interests recorded which it effects; but when it has been made without any apparent cause for annulment, such as those mentioned in the following article, it shall have all its effects with regard to third persons, who, by reason thereof, may have acquired or recorded any interest, although later it is annulled for some reason which does not clearly appear from the said record of cancellation.

ART. 98. The cancellation shall be void:

1. When it does not clearly show what record or entry has been cancelled.

2. When it does not contain the names of the parties thereto, of the notary, or in a proper case the judge or court, and the date of the execution or delivery of the deed, by virtue of which the cancellation was made.

3. When it does not express the name of the person at whose instance or with whose consent the cancellation was made.

4. When the cancellation is made in the name of a person other than the one in whose favor the record or entry is made, and it does not appear therein by what authority said person acted.

5. When a partial cancellation does not specify clearly what part of the realty has disappeared, or what part of the obligation is extinguished and what still remains.

6. When the cancellation having taken place by virtue of the record or entry of a private document, the Register does not certify that he

is acquainted with the persons signing the same, or with the witnesses, in default of the former.

7. When the date of the presentation of the instrument by virtue of which the cancellation was ordered or agreed to, is not contained in the Registry.

ART. 99. The cancellation may be declared null, but not to the prejudice of third persons, in accordance with the provisions of article 97:

1. When the instrument by virtue of which it was made is declared false, null, or insufficient.

2. When it has been effected through error or fraud.

3. When an incompetent judge or court ordered it.

ART. 100. Registers shall determine under their responsibility, the legality of documents by virtue of which cancellation is requested, and the capacity of the parties thereto.

ART. 101. They shall determine in the same manner documents issued by judicial authorities, for the sole purpose of making or not making the cancellation of some record in the Registry.

Against these determinations, and those mentioned in the preceding article, the remedies mentioned in article 66 of this law may be taken.

ART. 102. The Register shall at once make the cancellation upon the president declaring the competency of the judge.

When the judge is not considered competent, the same Register shall communicate this decision to the person interested, returning the documents.

ART. 103. An appeal may be taken to the Audiencia from the decision of the president by the judges as well as by the parties interested, who, after a a hearing, shall determine what it may deem just.

A remedy by cassation may be had as respects the decision of the Audiencia.

ART. 104. The cancellation of any record must necessarily contain the following facts:

1. The kind of document by virtue of which the cancellation is made.

2. The date of the document and of its presentation to the Registry.

3. The name of the judge, court, or official who may have issued it, or the notary before whom it was executed.

4. The names of the parties interested in the records.

5. The manner in which the cancellation was made.

TITLE V.

MORTGAGES.

SECTION 1.—*Mortgages in general.*

ART. 105. A mortgage, directly and primarily, subjects the property on which it is imposed, no matter who may be its owner, to the fulfillment of the obligation for the security of which it was constituted.

ART. 106. The following only are mortgageable:

1. Real property.

2. Property rights in the realty, alienable in accordance with the laws.

ART. 107. The following are mortgageable, but with such restrictions as are hereinafter expressed:

1. A building erected on ground belonging to another, which, if mortgaged by the person who constructed it, shall be without prejudice to the right of the owner of the ground, this incumbrance being only secured by the interest which the person who constructed the building has therein.

2. The right of use, the mortgage being extinguished if the use terminates by an act independent of the will of the grantee. If it is terminated by his will, the mortgage shall be effectual until the obligation secured is fulfilled, or until such time as the use would naturally have terminated had the act not occurred which put an end thereto.

3. The mere ownership, in which case, if the use is merged with it in the person of the owner, the mortgage shall not only be maintained, but shall also extend to the use itself, unless the contrary has been agreed to.

4. Property already mortgaged, even if it was agreed not to mortgage it again, provided the preference is reserved, which the creditors in whose favor the prior mortgages are created have in the collection of their loans.

5. Surface, pasture, water, timber, and other similar property rights, provided the interests of other owners in common of the property are reserved.

6. Railroads, canals, bridges, and other works destined for the public service the operation of which the Government has granted for ten or more years, and the buildings or lands which, although not directly and exclusively used for said service, belong to private parties, provided they have been added to those works; but the mortgage shall be dependent on the determination of the right of the owner of the concession.

7. Property belonging to persons not having the free disposition thereof, in the cases and with the formalities which the laws prescribe for its alienation.

8. The interest in a voluntary mortgage, but the said mortgage shall be dependent on the determination of the said interest.

9. Property sold under a covenant to reconvey, or similar agreement, if the purchaser or his attorney limits the mortgage to the amount he would receive in case the sale is decided upon, a notice of the contract being given to the vendor, so that if the property is redeemed before the mortgage is canceled he shall not return the price without the knowledge of the creditor, provided no judicial order has been issued to that effect, or if the vendor or his agent mortgages the value of the property and also the amount which the purchaser would realize if the sale is decided on; but in the latter case the creditor can not proceed against the property mortgaged without previously redeeming it, in the name

of the debtor, within the period the latter has a right to do so, advancing the sum which may be necessary for this purpose.

10. Property in litigation, if a cautionary notice has been made of the claim which is the basis of the litigation, or if it appears in the record, that the creditors had knowlege of the suit, but in either case, the mortgage shall depend upon the decision of the suit, without prejudicing the rights of the persons interested therein, with the exception of those of the mortgagor.

ART. 108. The following are not mortgageable:

1. Growing crops and unpaid rents, separated from the estate which produces them.

2. Chattels permanently located in buildings, either useful or ornamental, or for the service of some industry, unless they are mortgaged together with said building.

3. Public offices conferred by the Crown (oficios públicos).

4. Bonds of the State debt, or of provinces or towns, and the obligations and stocks in banks, corporations, or companies of any kind.

5. The property right in things, which, although they will be owned in the future, are not yet recorded in the name of the person who will have a right to own them.

6. Servitudes, unless they are mortgaged together with the dominant estate, and excepting in any case that of water, which may be mortgaged.

7. The right of use which the law allows fathers or mothers in the property of their children and the surviving spouse in the property of the deceased.

8. Use and occupation.

9. Mines, if a definite title thereto has not yet been obtained, even if they are situated within one's own property.

ART. 109. The owner of property which is subject to pending conditions subsequent may mortgage or convey the same, provided the rights of the person interested in said conditions is not prejudiced, an express reserve of the rights referred to being made in the record.

If the pending condition subsequent should affect the whole property mortgaged, the latter can not be conveyed to collect the debt until said condition has been fulfilled and the realty passes to the absolute ownership of the debtor, but the income to which the latter is entitled shall at once be applied to the payment of the debt.

When the condition subsequent affects only a portion of the property mortgaged it must be judicially conveyed, together with said condition subsequent, to which the ownership of the debtor is subject, and the selling price, besides the income he is entitled to, being applied to the payment.

If, before the sale takes place, the debtor acquires the absolute ownership in the property mortgaged, the creditor has a right of action against it, and may demand that it be conveyed for the payment.

The provisions of this article may be applied to the property pos-

sessed, with a pending right of subrogation in favor of persons who may not have consented to the mortgage of said property.

ART. 110. A mortgage extends to natural increase, improvements, growing crops, and rents not collected when the obligation falls due, and the value of indemnities allowed or due the owner for insurance on the property mortgaged, or by virtue of condemnation by right of eminent domain.

ART. 111. In accordance with the provisions of the preceding article, the following shall be considered mortgaged together with the estate, provided they belong to the owner of the estate, although they are not mentioned in the contract:

1. Chattels permanently located in a building, either useful or ornamental, or for the service of some industry, even though they were placed there after the creation of the mortgage.

2. Improvements consisting of new plantings, works of irrigation and drainage, repairs, works for safety or alterations, comfort, ornamentation or raising of buildings, and any other similar works, which do not consist of additions to the land, except natural accretions, or in the new construction of buildings, where previously none existed.

3. Crops, which at the time the obligation falls due, are growing on the trees and plants, or have already been harvested, but not yet removed or warehoused.

4. Rents due and not yet paid, whatever may be the reason they have not been collected, and such as shall have to be paid until the creditor has recovered his whole credit.

5. Indemnities awarded or due the owner of the mortgaged realty, either for the insurance thereof or for the crops, provided the damage occurred after the creation of the mortgage, or on account of condemnation of the land by the right of eminent domain.

ART. 112. When the mortgaged estate passes into the hands of a third party, the mortgage shall not extend to the chattels permanently located in the buildings, nor to the improvements which do not consist in repairs, works for security or alterations, provided the costs thereof have been defrayed by the new owner, nor to growing crops and rents due, which are the property of the latter.

If some portion of the ground of an estate encumbered by prior mortgages passes into the hands of a third person, and it appears by the Registry that it does not contain any machinery, chattel, object, or construction of any kind, said portion of the estate shall continue subject to prior mortgages on the estate; but the third person may remove, whenever it is convenient for him to do so, any machinery, object, chattel, or construction which he may have brought or placed there, according to the circumstances, judicial proceedings against such additions being prohibited, and it not being lawful, when the estate and the portion sold is attached or sold at a public sale by other previous creditors of record, to demand the retention of such additions, whatever may be

their character. Prior mortgagees shall be notified of the record of the sale.

ART. 113. The owner of the accessions or improvements which are not considered mortgaged according to the provisions of the first paragraph of the preceding article, may demand their value or retain the objects of which they consist, if this can be done without depreciating the value of the rest of the property; but in the former case he can not prevent the fulfillment of the principal obligation under the pretext of enforcing his right, being obliged to recover what is due him for the price of the property itself when it is conveyed for the payment of the debt.

ART. 114. A mortgage created in favor of an interest-paying debt shall secure to the prejudice of third persons, besides the capital, only the interest for the two years last past and such part as is due for the current year.

ART. 115. After three years have elapsed from the time the loan began to accumulate interest which remains unpaid, the creditor may demand that the mortgage created be enlarged on the same mortgaged property, for the purpose of securing the interest corresponding to the first of said years, but only in case the obligation to pay part of the interest is past due and the debtor has failed to satisfy it.

If the creditor makes use of his right after said three years have elapsed, he may demand that a mortgage be extended to cover all the interest which at the time of said extension was not covered by the first mortgage; but this can in no case prejudice a mortgage created in favor of a person who had previously and after the two years acquired an interest in the mortgaged property.

Should the debtor not consent to said mortgage extension the creditor may demand it in a declaratory action and have a cautionary notice of the alleged claim entered.

ART. 116. If the mortgaged estate does not belong to the debtor, the creditor can not demand that the extension of the mortgage mentioned in the preceding article be created; but he has the same right of action with regard to the other real property which the said debtor possesses, and which he can mortgage.

ART. 117. The creditor, in case of annuities (censos) in arrears, can not proceed against the estate thus encumbered by the annuity (censo) to the prejudice of another mortgagee or subsequent annuitant, except in the manner and with the restrictions mentioned in articles 114 and 115; but he may demand a mortgage in those cases, and with the limitations which a mortgagee has a right to, according to the preceding article, whoever may be the owner of the estate encumbered by the annuity (censo).

ART. 118. When an estate on which an emphyteusis has been given has incurred forfeiture according to the laws, it shall pass into the hands of the immediate owner of the property, with the mortgages or incum-

brances on the realty, constituted by the grantor of the emphyteusi but all interests of said immediate owner being reserved at all time

ART. 119. When several estates are mortgaged together to satisf one debt only, the sum or portion of the incumbrance for which eac estate is to be responsible shall be determined.

ART. 120. After the portion of the debt for which each mortgage estate must be responsible is entered in the record, they can not be pro ceeded against to the prejudice of third persons, except for the amoun for which they are respectively responsible and the corresponding interest in accordance with the provisions contained in preceding articles.

ART. 121. The provisions of the preceding article shall not be understood as prejudicing the rights of the creditor, if the mortgage does not satisfy the total amount of the debt, to proceed to recover the difference against the other mortgaged property which the debtor still owns, but without preference as to said difference over those who may have acquired some real interest in the property after the mortgage was recorded.

ART. 122. The mortgage shall continue intact as long as it is not canceled on all the property mortgaged, even if the obligation secured is reduced, and on any other portion of the same property which is retained, although the remainder has disappeared, but without prejudice to the provisions contained in the following two articles.

ART. 123. If a mortgaged estate is divided into two or more parts, the mortgage debt shall not be distributed among them unless the creditor and the debtor voluntarily agree to do so. If this distribution does not take place, the creditor may proceed for the whole of the sum guaranteed against any of the new estates into which the first one was divided, or against all of them simultaneously.

ART. 124. If a mortgage created for the security of a debt is distributed among various estates and the portion of the debt which is due from any of the estates has been paid, the interested party may demand a partial cancellation of the mortgage with regard to said estate. If the portion of the debt paid has been applied to the discharge of one or the other of the encumbered estates, not being less than the sum for which each is responsible, the debtor may select the one which is to be redeemed.

ART. 125. If there is only one estate mortgaged, or being several and the responsibility of each one is not stated on account of the occurrence of the case mentioned in article 123, the discharge can not be demanded of any portion of the mortgaged property, no matter what portion of the debt has been satisfied by the debtor.

In the case of one or several estates being encumbered by mortgage debts of various creditors, and they are sold or awarded for the payment of the first creditor in such manner that the value of what is sold or awarded does not equal or exceed the mortgage debt which is liqui-

dated, the remaining debts shall be, by act and right, considered canceled, and will therefore be canceled in the registry after the proper order of the court for the sale or award, and the reasons therefor are filed referring to the instrument which created the solvency of the preferred debt, all subsequent records of annuities (censos) or mortgages and records of attachment also made subsequently, thus leaving the estate or estates which have been conveyed or awarded free from all incumbrances.

This shall be without prejudice to other rights and actions which the remaining creditors may exercise against the debtor in accordance with the laws.

ART. 126. A mortgage created by a person who has no right to do so, according to the Registry, shall not be valid, even if the mortgagor subsequently acquires said right.

ART. 127. In the mortgage shall appear the value of the estate as appraised by the contracting parties, which shall serve as a basis for the only judicial sale which can take place, if the period of the loan having expired, it does not appear in the Registry of property that said loan has been paid.

ART. 128. The judicial procedure before the public sale shall consist in the presentation, by the creditor, of a document to the court of competent jurisdiction in the place in which the property is situated, accompanied by the instrument constituting the debt, with a note of the record, and a certificate from the Register of property testifying that the mortgage lien does not appear canceled in his books at the end of said period.

Payment shall be demanded of the debtor if he resides in the place in which the estate is situated, or if his domicile is known; otherwise it shall be sufficient to notify the person in charge of the estate in any legal capacity, so that he may inform the owner of the demand.

Thirty days after this demand the orders shall be published in the Gazette (Gaceta) of the proper island, stating the condition of the title deeds, the public sale taking place twenty days after said publication. If there is no bidder the claimant may demand that the property be awarded to him, being responsible for all prior liens, if there be any.

When an estate is sold at public auction at the instance of a second or subsequent mortgagee, or common creditors, the sale shall be declared null and void if a sufficient sum is not offered to cover all previously recorded debts, including the interest which it appears is stipulated according to the Registry. Any subsequent sales which they may deem advisable may take place at the cost of the claimants, providing they prove by a certificate from the Registry that they have not as yet been paid.

The estate proceeded against shall not be responsible for any costs which may be incurred, if the amount indispensable for this purpose is not entered in the Registry.

In the regulations for the execution of this law, the other details f this summary proceeding shall be determined.

ART. 129. If, before the creditor collects his interests in the mo gaged estate it should pass into the hands of a third person, all tl measures prescribed in the preceding article shall have to be institute against the latter, who is subrogated to the person of the debtor.

ART. 130. The provisions of the two preceding articles may also b applied to the case when an installment of the principal or interest ha not been paid, due at different periods, if one of them lapses withou the debtor fulfilling his obligation, provided said stipulation is recorde in the Registry.

ART. 131. If for the payment of one of the installments of the capita or interest it should be necessary to convey the mortgaged estate, an other installments of the obligation shall still remain due, the sale shal take place, and the estate shall be transferred to the purchaser wit the proper mortgage for the portion of the debt which has not yet bee satisfied, which portion with the interest will be deducted from the price.

If the purchaser does not desire the estate with this lien, the value thereof with the proper interest shall be deposited, to be paid to the creditor when the pending payments fall due.

ART. 132. A person who either may have acquired only the use or some interest in the mortgaged estate, or the title or direct ownership of the property, the correlative interest remaining in the debtor shall be considered a third party in interest, for all the purposes of article 129. If there should be more than a third party in interest, because one person had the title or direct ownership and another the use of, or some interest in, the mortgaged estate, the summons shall be served on the person in charge of the estate.

ART. 133. In no case shall the summary proceedings be suspended, on account of the objections of a third person, if they are not founded on a deed which has been previously recorded, nor by the death of the debtor, nor that of the third party owning the estate, nor by a declaration of bankruptcy, nor by the general assignment proceedings of creditors against any of them.

ART. 134. A foreclosure shall be prescribed after twenty years, computed from the time when such action could have been instituted, in accordance with the recorded deed.

ART. 135. Mortgages legally created on property which hereafter can not be mortgaged in accordance with this law, shall be governed, during the time they are in force, by the previous legislation.

ART. 136. Records and cancellations of mortgages shall be made in accordance with the regulations established in titles 2 and 4, for records and cancellations in general, without prejudice to the special provisions contained in this title.

ART. 137. Mortgages are voluntary or legal.

SECTION 2.—*Voluntary mortgages.*

ART. 138. Voluntary mortgages are mortgages which are agreed to between parties, or constituted by the will of the owner of the property on which they are created.

ART. 139. Voluntary mortgages may only be created by persons who have the free disposition of their property, or, in case they should not have it, if they are authorized to do so in accordance with the laws.

ART. 140. Persons who, in accordance with the provisions of the preceding Article, are authorized to create voluntary mortgages may do so personally, or through an agent having a special power of attorney to contract this class of obligations, executed before a Notary Public.

ART. 141. A mortgage made by a third person without sufficient power, may be ratified by the owner of the mortgaged property; but this shall only be effectual from the date of the new record, by which the error committed is rectified.

ART. 142. A mortgage created for the security of a future obligation subject to recorded conditions subsequent, shall be effectual against third parties from the date of record, if the obligation is finally contracted or the condition fulfilled.

If the obligation secured is subject to a recorded condition subsequent, the mortgage shall be effectual as to third persons until it appears from the Registry that the condition has been fulfilled.

ART. 143. When the future obligation has been contracted, or the condition subsequent mentioned in the preceding Article is fulfilled, the interested parties must record it by means of a marginal note in the mortgage record, without which requisite the mortgage created can not benefit nor prejudice third persons.

In the same manner they must enter the nonfufillment of the condition or of the obligation.

ART. 144. Any act or agreement between the parties which might modify or destroy the efficacy of a prior mortgage debt, such as payment, compensation, extension of time, a contract or promise not to demand, the novation of the original contract, or a settlement or compromise, shall not be effectual against third persons unless it is entered in the Registry by means of a new record, by a partial or total cancellation, or by a marginal note, according to the particular cases.

ART. 145. The interest on the loan shall not be considered secured with the mortgage in the manner prescribed by Article 114 unless the stipulation and amount of said interest appear in the same record.

ART. 146. In order that voluntary mortgages may be legally created in a valid manner, it is necessary:

1. That they were agreed to or constituted by a public instrument.
2. That the instrument is recorded in the Registry established by this law.

ART. 147. A mortgagee may proceed against the property mortgaged for the payment of the interest due, no matter at what period the principal is to be paid; but if a third person, whom the proceedings could

injure, is interested in said property, the sum demanded can not exceed that due and not paid for the interest for the two years last past and the part due for the current year.

ART. 148. Such part of the interest which the creditor can not demand in a foreclosure suit, he may claim in a personal action, being considered with regard thereto if there be general assignment proceedings, as a creditor protected by a public instrument (acreedor escriturario).

ART. 149. Records of voluntary mortgages can only be canceled in the manner prescribed by Article 82. If the persons who should make the cancellation oppose it, it may be decreed by the Court.

ART. 150. When an annuity (censo) encumbered with a mortgage is redeemed, the mortgagee shall have a right to demand of the redeemer that he either pay his debt entirely, including the interest due and to become due, or that he recognize the mortgage on the estate encumbered by the annuity (censo).

ART. 151. In the latter case of the preceding Article, a new record of the mortgage shall be made, which shall clearly express its recognition by the redeemer, which shall be effectual from the date of the previous record.

ART. 152. A mortgage credit may be conveyed or assigned to a third person totally or partially, provided it is effected by means of a public instrument, notice of which is given to the debtor, and that it is recorded in the Registry.

The debtor shall not be bound by said contract to any greater extent than he was by his own.

The assignee shall be subrogated to all the rights of the assignor.

ART. 153. In a mortgage created to guarantee negotiable obligations or deeds to bearer, when the mortgage interest is alienated or assigned, it shall be understood that the latter is transferred together with the obligation or with the deed, it being unnecessary to give notice thereof to the debtor, or to record the transfer in the Registry.

ART. 154. If, in the cases where it is necessary, a notice to the debtor of the assignment of the mortgage debt is omitted, the assignor shall be responsible for any damage which the assignee may suffer in consequence of this omission.

ART. 155. The interests or debts secured by a legal mortgage can not be assigned until the time they are due, and the persons in whose names they stand, have the legal capacity to convey them.

ART. 156. A mortgage shall be effectual with regard to third parties until the record is canceled.

SECTION 3.—*Legal mortgages.*

ART. 157. Only those established in Article 168 are legal mortgages.

ART. 158. The persons in whose favor this law creates legal mortgages shall have no other right to demand the creation of a special mortgage sufficient to secure their interest.

ART. 159. To constitute a legal mortgage it is necessary that the document, by virtue of which it was created, has been recorded.

ART. 160. The persons in whose favor this law establishes legal mortgages may demand the constitution of a special mortgage on any real property or property rights possessed by the person who is obliged to make it, always provided it is mortgageable under this law.

They may also demand this mortgage at any time, even though if the reason on which it was founded has ceased, such as marriage, guardianship, minority, or administration, provided the obligation which was to be secured is not fulfilled.

ART. 161. After a legal mortgage has once been created and recorded it has the same effect as a voluntary mortgage without any other exceptions than those expressly specified in this law, whoever may be the person who is to exercise the rights conferred by said mortgage.

ART. 162. If several estates are offered for the creation of a legal mortgage, and the interested persons do not agree to the amount which is to be secured by each, the Judge or Court shall decide in accordance with Article 119, after a report of experts.

The Judge or Court shall decide in the same manner questions arising among the interested parties as to the sufficiency of the estate offered for the creation of any legal mortgage.

ART. 163. Whenever the recorded legal mortgages become insufficient, the persons who, according to this law, have either the right or obligation to do so, may request the right or must demand the obligation of their sufficiency or amplification.

ART. 164. Recorded legal mortgages shall remain in force until the rights for the security of which they were created have been extinguished, and they shall be canceled in the same manner as voluntary mortgages.

ART. 165. To judicially constitute or amplify any legal mortgage at the instance of a litigant, the procedure shall be in accordance with the following rules:

1. Any person, who has a right to demand it, shall present a petition to the Judge or Court of the domicile of the person compelled to grant it, requesting that the mortgage be constituted, stating the amount for which it should be created, and stating what property may be thus encumbered, or at least indicating the Registry which should contain the record of the property which said person owns.

2. This petition must necessarily be accompanied by the deed or document giving rise to the right to a legal mortgage, and, if possible, a certificate from the Register in which shall be stated all the mortgagable property owned by the defendant.

3. The Judge or Court shall, in view of these papers, order to appear before it all the persons interested in the creation of the mortgage, so that they can agree, if it be possible, as to the manner of constituting it.

4. Should they come to an agreement, the Judge or Court shall order the mortgage created in the manner agreed upon.

5. Should they fail to agree, either as to the obligation to mortgage, or as to the amount which is to be secured, or as to the sufficiency of the mortgage offered, a copy of the petition shall be given the defendant, and the proceedings shall follow the course established for such cases in Articles 732 to 744 of the Law of Civil Procedure in force in the Philippines, and 748 to 760 of that in force in the Antilles.

ART. 166. In cases where the Judge or Court must proceed, by reason of a duty imposed, to demand the constitution of a legal mortgage, he shall order the proper Register to send him the certificate mentioned in Rule No. 2 of the preceding Article; in accordance thereto he shall order the person obligated to constitute the mortgage to appear before him, and with his consent and that of the Department of Public Prosecution he shall continue the proceedings in the manner prescribed.

ART. 167. The provisions contained in the two preceding Articles shall be understood without prejudice to the Regulations established for mortgages given to secure property, which is to be set apart, and the bonds of guardians, and shall not be applicable to a legal mortgage in favor of the State, provinces, or towns, except when the administrative regulations do not establish any other procedure by which they may be demanded.

ART. 168. A legal mortgage shall be made:

1. In favor of married women on the property of their husbands:

For the dowry which may have been formally delivered to them in the presence of a notary;

For gifts which said husbands may have offered them within the limits of the law;

For the personal property, in addition to the dowry, which the wives may have brought with them on their marriage, which, with the same formalities, they may have delivered to their husbands;

For any other property that the wives may have brought on their marriage and delivered to their husbands with the same formalities.

2. In favor of the relatives referred to in Article 811 of the Civil Code, on the property of the person who shall have the duty to do so, for the property which said article declares subject to be set apart; and in favor of the children, on the estates of their parents, for those which the latter must set apart for them according to the law, and for those which belong to said children while they are minors in charge of the father or mother, in case the latter should remarry.

3. In favor of the heirs of the deceased spouse on the property of the surviving one, for the share of the inheritance, the use of which the latter has a right to enjoy according to law, in case specific property passes into his or her possession for this purpose, in case of remarriage.

4. In favor of minors or incapacitated persons on the property of their guardians, for the amount the latter may have received from them and for the responsibility they incur, unless they give a bond for security instead of a mortgage bond.

5. In favor of the State, provinces, or towns, on the property of persons making contracts with them or administering their interests, for the liabilities which they incur in accordance with the law; on the property of taxpayers for the amount of an annual tax thereon, which has fallen due and has not been paid.

6. In favor of underwriters on property insured, for the insurance premiums for two years; and if the insurance is based on the mutual system, for the last two assessments which may have been declared.

DOWRY MORTGAGES.

ART. 169. The married woman in whose favor this law established the legal mortgage shall have a right to demand:

1. That the husband mortgage and record in the Registry in her name, all the real property and property rights which he may have received as appraised dowry or with the obligation of returning their value.

2. That all the other property which the husband receives unappraised and which he must return, in a proper case, be recorded in the Registry, if it has not already been done, as dowry, or personal property in addition to the dowry, or by whatever legal designation it may have.

3. That the husband secure, by means of a special sufficient mortgage, all other property not embraced in the preceding paragraphs, and which is delivered to him by reason of the marriage.

ART. 170. The dowry admitted by the husband, the delivery of which is not certified to or only appears from a private document, shall have no other effect than that of a personal obligation.

ART. 171. Notwithstanding the provisions of the preceding article, a woman who may have a dowry acknowledged in her favor by the husband, before the celebration of the marriage, or within the first year thereafter, may at any time demand that the husband secure it by a mortgage in her favor, provided she legally proves the existence of the dowry property or other similar or equivalent property at the time of alleging her claim.

ART. 172. The real property or property rights which are delivered as an appraised dowry shall be recorded in the Registry of Property in the name of the husband in the same manner as any other acquisition of ownership, stating besides, in the record the amount of the dowry of which said property forms part, the amount at which it was appraised, and the dowry mortgage created thereon, provided the husband does not mortgage other property sufficient to secure the appraised value of the former.

ART. 173. If the woman has recorded in her name the real property which is to constitute the unappraised dowry, or the personal property in addition to the dowry, which she delivers to her husband, the proper character of either property shall be described in the Registry, a marginal note for this purpose being entered on said record of the property.

Should said property not be recorded in the name of the wife, it shall be entered in the usual form, stating in the record whether it is a dowry, or personal property in addition to the dowry.

ART. 174. When on recording appraised dowry property in the name of the husband, the Register is obliged to enter the mortgage in favor of the wife, and the deed which is presented be not sufficient for this purpose, he shall suspend the record and enter the necessary cautionary notice.

ART. 175. The legal mortgage created by the husband in favor of the wife shall guarantee the restitution of the property or its appraised value only in case such restitution takes place in accordance with the laws and with the limitations prescribed therein; and it shall cease to have effect, and may be canceled whenever for any legal cause the husband is exempted from the obligation to restore it.

ART. 176. The sum which must be secured by virtue of an appraised dowry shall in no case exceed the value of its appraisement; and if the value of said dowry is reduced because it exceeds the sum permitted by law, the mortgage shall likewise be reduced in the same proportion, after the proper partial cancellation has been made.

ART. 177. When an unappraised dowry is created on property other than real, it shall be appraised for the sole purpose of fixing the amount that the mortgage is to secure, in case said property does not exist at the time it should be restored, the dowry not losing thereby its character of being unappraised, if it was thus qualified in the dowry deed.

ART. 178. A mortgage to secure gifts by reason of marriage, shall only be made should they be offered by the husband as increasing the dowry. If they are offered without this requisite they shall constitute a personal obligation, the husband having the option of securing them by mortgage or not.

ART. 179. The husband is not obliged to create a mortgage for the personal property in addition to the dowry of his wife, unless the latter is conveyed to him for his administration by a public instrument properly executed before a Notary.

ART. 180. To constitute the mortgage referred to in the preceding Article, the property shall be appraised or its value fixed by those who, according to this law, have a right to demand it and to determine its sufficiency.

ART. 181. Property brought in marriage, for the effects of the last paragraph of number 1 of Article 168, shall be understood to be such property which in any matter whatsoever, in accordance with local customs, the wife brings to the conjugal partnership, provided it is conveyed to the husband by means of a public instrument properly executed before a Notary for his administration, either by appraisement in view of its sale, or with the obligation of keeping it or returning it on the dissolution of the marriage.

When the delivery of the property mentioned in the preceding paragraph appears only by the acknowledgment of the husband, the crea-

tion of a dowry mortgage can not be demanded, except in the cases and manner prescribed by Article 171.

ART. 182. A married woman who is of age may herself demand the creation of the mortgage and record of property mentioned in Article 169.

If she has not as yet contracted the marriage, or if she has done so and is a minor, said right shall be exercised in her name and the sufficiency of the mortgage created shall be determined by the father, the mother, or the person who gives the dowry, or the property which should be secured.

ART. 183. In default of the persons mentioned in the preceding article, and the woman being a minor, whether married or single, the extension of these rights must be demanded by the guardian, his substitute, the family council, or any of its members.

ART. 184. If the guardian or his substitute, or the family council do not demand the creation of the mortgage, it shall be the duty of the Public Prosecutor to demand, or at the instance of any person, a demand may be made, to compel the husband to execute the same.

ART. 185. Municipal judges shall also have the obligation of inducing the Department of Public Prosecution to see that the provisions of the preceding Article are complied with.

ART. 186. If the husband does not possess any property with which to create the mortgage mentioned in number 3 of Article 169, he must create it on the first realty or property rights he may acquire; but this obligation can not prejudice a third person until the mortgage is recorded.

ART. 187. When the dowry consists of rents or perpetual annuities, and they are alienated, their restitution shall be secured by creating a mortgage for the principal represented by said rents or annuities capitalized at the legal rate of interest.

ART. 188. If the annuities referred to in the preceding Article are of a temporary character and could or should continue after the dissolution of the marriage, a mortgage shall be created for the amount agreed to between the husband and wife, and, should they not come to an agreement, for the amount fixed by the Judge or Court.

ART. 189. The provisions of this law with regard to dowry mortgages do not alter or modify the provisions contained in Articles 880, 881, and 909 of the Code of Commerce.

MORTGAGES FOR PROPERTY TO BE SET APART.

ART. 190. The special mortgage, which minor children have a right to demand by reason of the property to be set apart, shall be created under the following conditions:

1. The father shall present to the Judge or Court an inventory and appraisement made by experts of the property which is to constitute the security, with a statement of the property which he offers for mortgage, accompanied by the title deeds proving his ownership thereof, and

documents showing its value and its freedom from all incumbrances or specifying what liens exist thereon.

2. If the Judge or Court considers the account of the property correct, and the mortgage offered sufficient, a memorandum shall be issued in the proceedings, declaring what realty is set apart, so that this reservation may be embraced in the proper records of ownership, and shall create the mortgage for the value of the rest of the property subject to be set apart on that under the absolute ownership of the father, which is offered as security.

3. Should the Judge or Court be in doubt as to the sufficiency of the mortgage offered by the father, he may order the latter to take the necessary steps or present the documents which he may deem necessary to prove its sufficiency.

4. Should the mortgage not be sufficient, and should the father have other property on which it can be created, the Judge or Court shall order it to be extended to such property as, in his judgment, is sufficient to secure the rights of the child. Should the father not possess any other property, the Judge or Court shall order it created on the property offered, but shall express in the decree that it is not sufficient and declare the obligation of the father to extend it to the first realty he may acquire.

5. The memorandum mentioned in number 2 of this Article shall contain all the details which a mortgage record should embrace, and shall be signed by the father, certified by the Clerk of the Court, and approved by the Judge or Court.

6. By means of the presentation to the Registry, of a copy of this memorandum, and of the decree of its judicial approval, the proper record and entry shall be made to certify that the property may be set apart to constitute the mortgage mentioned in number 2.

ART. 191. If ninety days elapse and the father has not presented to the Judge or Court, the record of the proceedings mentioned in the preceding Article, the fulfillment thereof may be demanded by relatives, whatever may be their degree, by the executor of the deceased spouse, or in default by the Department of Public Prosecution.

ART. 192. The period of ninety days mentioned in the preceding paragraph shall be computed from the time that the property should be set apart, on account of the contraction of a second or subsequent marriage.

ART. 193. If two or more of the persons mentioned in Article 191, apply for the creation of the legal mortgage, preference shall be given to the one making the first application.

ART. 194. Should the children be of age, only they themselves can demand the creation of the mortgage in their favor.

ART. 195. The Judge or Court which approved the record of proceedings mentioned in Article 190 shall see, under his or its responsibility, that the records and entries prescribed by number 6 of the same Article are duly made.

ART. 196. Should the father not have any mortgageable property, the proceedings provided in Article 190, shall also be instituted for the sole purpose of recording what is set apart and its value.

ART. 197. The decree issued in the case of the preceding Article shall only express what is necessary, regarding what is set apart and its value, and the obligation of the father to mortgage the first realty he may acquire.

If the property set apart consists of realty, the Judge or Court shall order that its classification be entered in the Registry in the manner prescribed by Article 173.

ART. 198. The mother shall give security for the rights of her children to the property set apart, with the same formalities as the father.

ART. 199. The special mortgage to secure the property set apart, established by Article 811 of the Civil Code, may only be demanded by the relatives in whose favor the property is to be set apart, should they be of age. If they are minors, the persons who legally represent them shall demand it in their name. In either case, the interest of the persons in whose favor the property is to be set apart, shall be secured, with the same requisites mentioned in the preceding Articles, including, with regard to the property to be set apart, the provisions relating to the father.

MORTGAGES OF PROPERTY OF PERSONS STILL UNDER PARENTAL AUTHORITY.

ART. 200. The father, or when there is none, the mother, is the legal administrator of the property of the children who are still under his or her authority, although with the obligation of creating a legal mortgage in favor of the latter, should he or she contract a second marriage.

ART. 201. The children in whose favor legal mortgages are established by the preceding Article, shall have a right to demand:

1. That the realty belonging to them be recorded in their name, if this has not already been done.

2. That the father, or, in a proper case, the mother, secure by a special mortgage, if it can be done, the property other than realty, belonging to the said children.

ART. 202. It shall be understood that the father, or, in a proper case, the mother, can not create the mortgages mentioned in the preceding Article, should they not have any mortgageable real property.

ART. 203. If the real property which the parents possess is insufficient, they shall, however, create a mortgage thereon, without prejudice to its extension to other property which they may subsequently acquire, should they be required to do so.

ART. 204. The extension of the rights mentioned in Article 201 may be demanded in the name of the children by:

1. The persons from whom the property is derived.
2. The heirs or executors of said persons.
3. The ascendents of the minor.

ART. 205. Neither the father, or, in a proper case, the mother, ca convey the real property belonging to the child, of which they enjo the use or administration; nor can they encumber it, except for justifie reasons of profit or necessity, and with the previous authority of th Judge of the District, on hearing the Department of Public Prosecution

ART. 206. In case the persons mentioned in Article 204 do not demand that the rights expressed in Article 201 be accorded, the Public Prosecutor may do so by reason of his duty.

MORTGAGES BY REASON OF GUARDIANSHIP.

ART. 207. The guardian, before his charge is conveyed to him, and to insure a good result from his administration, shall give a bond, which must be either a mortgage or a bond for security.

ART. 208. The mortgage bond shall be entered in the Registry of Property.

ART. 209. Pending the execution of the bond, the substitute of the guardian shall exercise all the administrative acts, which the family council may consider indispensable for the preservation of the property, and to collect the income therefrom.

ART. 210. The record of the mortgage bond, when such bonds are given, must be demanded by:

1. The guardian.
2. The substitute of the guardian.
3. Any member of the family council.

ART. 211. The persons omitting the formalities mentioned in the preceding article shall be responsible for any loss or damage.

ART. 212. A mortgage bond must secure:

1. The value of the personal property which comes into the hands of the guardian.
2. The rents or income which the property of the minor or incapacitated person yields during the period of one year.
3. The profit which the minor may receive during one year from any mercantile or industrial enterprise.

ART. 213. The family council is charged with the duty of fixing the amount of the mortgage bond and its determination.

ART. 214. A mortgage bond may be increased or reduced during the exercise of the guardianship, according to the changes in the value of the property of the minor or incapacitated person.

ART. 215. A mortgage bond can not be totally canceled until after the accounts of the guardianship have been approved, and the guardian has satisfied all the responsibilities of his administration.

ART. 216. The following are exempted from giving security as guardians:

1. The father, the mother, and the grandparents in case they are called upon to assume the guardianship of their descendants.

2. The testamentary guardian relieved from this obligation by the father, or, in a proper case, by the mother. This exemption shall cease when subsequently to his appointment, reasons arise unknown by the testator, which should make the giving of a bond indispensable, in the opinion of the family council.

3. A guardian appointed and exempted from giving bond by strangers, who may have made the minor or incapacitated person their heir or left them an important legacy. In this case the exemption shall be confined to the property or income of which the inheritance or legacy consists.

OF OTHER LEGAL MORTGAGES.

ART. 217. The competent official shall require the creation of special mortgages on the property of persons administering public funds or who have made contracts with the State, provinces, or towns, in all the cases, and in the manner prescribed by the administrative regulations.

ART. 218. The State, province, or towns shall be preferred to any other creditor in the recovery of one year's taxes on the realty.

To secure a like preference for a larger sum than that represented by said taxes, the State may require a special mortgage, in the form prescribed by the administrative regulations.

ART. 219. The person insuring real property shall have a right to require a special mortgage on the property insured, the owner of which has not satisfied the insurance premiums for two or more years, or two or more of the last assessments, if the insurance is based on the mutual system.

ART. 220. While the premiums for the last two years, or, in a proper case, the last two assessments are not paid, the claim of the insurer shall have preference over any other claims.

ART. 221. When the two assessments or premiums referred to in the two preceding Articles are due and have not been satisfied, a mortgage shall be created for the whole sum that is due, and the entry thereof shall be effectual only from its date.

TITLE VI.

OF THE MANNER OF KEEPING THE REGISTRIES.

ART. 222. The registry of property shall be kept in books folioed and rubricated by the Judges of First Instance of a subdistrict, or by the Municipal Judges delegate for the inspection of Registries.

ART. 223. The books mentioned in the preceding Article shall be uniform for all Registries, and shall be formed under the direction of the Colonial Department, with all precautions necessary for the prevention of any fraud or forgery which might be committed therein.

ART. 224. The only books valid shall be those made by the Registers, in accordance with the provisions of the preceding Article.

ART. 225. The books of the Registry can for no reason whatsoever be removed from the office of the Register. All judicial or extrajudicial proceedings requiring the exhibition of said books shall be held in the office itself.

ART. 226. The books shall be numbered in their chronological order.

ART. 227. The Registry of property shall embrace records or entry cautionary notices, cancellations, and notes of all documents subject to record according to Articles 2 and 5.

ART. 228. The Registry of property shall be kept by opening a special record for each estate in the proper book, entering as the first record thereof the first one which is demanded with relation to said property, provided it refers to transfer of property.

When the first entry that is demanded is not of this kind, the last record of ownership which may have been made in the old books shall be transferred to the new ones, in favor of the owner of the property encumbered by the new record. All subsequent records, entries, and cancellations shall be made immediately following each other, without leaving any blank space between them.

ART. 229. The entries relating to each estate shall be numbered in their proper order and signed by the Register.

ART. 230. One book shall be opened for each municipal district wholly or partially included within the jurisdiction of a Register.

ART. 231. The books of each municipal district shall have a special numeration in proper order, besides that mentioned in Article 226.

ART. 232. The Government may order, for reasons of public convenience, that a municipal district be subdivided into two or more sections, and that a Registry book be opened for each one of them.

ART. 233. In the case mentioned in the preceding article, to the numeration which the books must have, according to Articles 226 and 231, shall be added the words "Section First" or "Section Second," or the proper one.

ART. 234. When a deed embraces several real properties or property rights located within one municipal district, the first entry made shall contain all the details prescribed by Article 9, and in the following ones the estate only shall be described, should it be necessary, or the property right which is the subject of each of them shall be described, and the nature of the instrument or contract shall be stated, the names of the grantor and of the grantee, the date and town where the instrument was executed, and the name of the Notary who authenticated it, or of the official who executed it, making reference for all other details to said first record, stating the liber and folio containing it.

ART. 235. If the instrument referred to in the preceding Article is one creating a mortgage, the record must express, besides the details prescribed in said Article, the part of the debt for which each estate or interest is liable.

ART. 236. If the property or interests contained in one deed, are located in two or more municipal districts, the provisions contained in the two preceding articles shall be applied to each of said districts.

If any of the latter have been divided into sections, in accordance with the provisions of Article 232, each section shall be considered as if it were a municipal district.

ART. 237. The Register shall authenticate, with his signature in full, the entries of presentation contained in the Day Book, as well as the records, cautionary notices and cancellations, and the notes, with an abbreviation of his name.

ART. 238. Registers shall also keep a book called a Day Book, in which they shall make a brief entry of the contents of every document at the time of its presentation.

ART. 239. The entries in the Day Book shall be numbered in proper order at the time of their inscription.

ART. 240. The entries mentioned in the preceding Article shall be made in the order in which the documents are presented, without leaving any blank space between them, and shall contain:

1. The name, surname, and residence of the person presenting the document.
2. The hour of its presentation.
3. The character of the document presented, its date, and the official or notary subscribing it.
4. The character of the interest created, conveyed, modified, or abrogated by the document to be recorded.
5. The nature of the estate or property right which is the subject of the document presented, with a statement of its location, its name, and its number, should it have any.
6. The name and surname of the person in whose favor the record is desired.
7. The signature of the Register and of the person who presents the document, or of a witness, should that person not be able to sign.

ART. 241. When the Register makes the record, cautionary notice, or cancellation to which the entry of presentation refers, in the proper book, he shall state this fact by means of a marginal note opposite said entry of presentation, stating the volume and folio where the former may be found, as well as the number of the estate according to the Registry and the number given to the requested record.

ART. 242. Every day not a working day, at the time previously indicated at which the Registry is to be closed in the manner prescribed by the Regulations, the Day Book shall be closed by a memorandum executed by the Register, immediately after the last entry he may have made. Mention shall be made therein of the number of entries executed during the day, or if none have been made, this fact shall also be stated.

If the time for closing the Registry should arrive before an entry is terminated, it shall be continued until its conclusion, but without, however, admitting any other document in the meantime and stating this circumstance in the final memorandum.

ART. 243. Entries of presentation made after the office hours of the Registry shall be null.

ART. 244. At the foot of any document recorded in the Registry of property, the Register shall affix a note, signed by himself, expressing the kind of entry which has been made, the liber and folio containing it, the number of the estate, and the number of the record made.

ART. 245. No entry shall be made in the Registry of property until the fees established or to be established by law are previously paid, should any be due for the instrument or contract to be recorded.

ART. 246. Notwithstanding the provisions of the preceding Article, the entry of presentation may be made before the payment of the fees; but, in such case, the entry shall be suspended and the document shall be returned to the person who presented it, so that, after its examination, he may liquidate and satisfy said fees.

When these have been paid the interested person shall return the document to the Registry, and the record shall be made, the effects of which shall retroact to the date of the entry of presentation, provided the deed has been returned within the thirty days immediately following the date of said entry.

If the deed is returned after said thirty days have elapsed, a new entry of presentation shall be required, and the effects of the entry made shall retroact to the date of the new entry. In case the fees have not been paid because the office or official having in charge their liquidation or collection, has consulted with his superiors as to some doubtful question regarding the case, the period of thirty days shall be suspended from the time of said consultation, until the matter is definitely settled, which circumstance shall be stated in a marginal note opposite the entry of presentation, the document which the interested party must present to the Register being seen by the latter, provided this officer is not certain as to the fact.

ART 247. The liquidation of the fees which must be paid in each case shall be made through the proper office or official in the manner prescribed by the Regulations.

ART. 248. Receipts for fees collected for instruments and contracts subject to record, shall be made in duplicate, and both copies shall be delivered to the person making the payment. One of these copies shall be presented to the Register, who shall file it in his office.

The Register who should not preserve said copy shall be directly liable to the Treasury for the fees which may not have been liquidated.

ART. 249. In order that any entry may be made in the Registry by virtue of a judicial decree, the Judge or Court shall issue the proper order in duplicate.

The Register shall return one of the copies to the same Judge or Court from whom it was received, or to the interested party who may have presented it, with a note signed by him, stating that it has been complied with, and keeping the other one in his office, making thereon a

rubricated memorandum similar to the one made on the copy returned. The documents shall be filed in one package, numbered in the order of their presentation.

ART. 250. To totally or partially cancel a mortgage, the document by virtue of which it is to be made shall be presented, as well as the instrument creating it, which shows that it has been recorded. On both documents a memorandum shall be made stating that the cancellation and its entry have been executed in accordance with Article 244.

In order that the persons interested in the cancellations may not be deprived of the document, when it is a public instrument, a copy on common paper shall be presented therewith, signed by said persons. After being compared by the Register he shall state its conformity with the original, by means of a memorandum, filing it and returning the original to the interested person.

Registers shall preserve in their chronological order in numbered packages the documents by virtue of which any mortgage is canceled.

ART. 251. Any other documents which may be presented to the Register, shall be returned to the interested parties with the memorandum mentioned in Article 244 affixed thereto, after the proper use thereof has been made.

ART. 252. The persons interested in a record, cautionary notice, or cancellation may demand that before the principal entry thereof is made in the book a draft of said entry be shown them.

Should they note any error or important omission they may demand its correction, applying to the President of the Audiencia or to his representative, should the Register refuse to comply.

The President of the Audiencia or his representative shall decide what is necessary, without any formal proceedings and within the period of six days.

ART. 253. Whenever the interested person has had notice of the draft in the manner prescribed in the preceding Article, and he expresses his satisfaction therewith, or, in default thereof, the President of the Audiencia should decide the form in which it should be made, either circumstance shall be mentioned in the proper entry.

TITLE VII.

OF THE CORRECTION OF ENTRIES IN REGISTRIES.

ART. 254. Registers may themselves correct, on their own responsibility, any material errors committed—

1. In the entries of principal records, cautionary notices, or cancellations, the respective documents being on file in the office.

2. In entries of presentation, marginal notes, and notes of references, although the documents are not on file in the office of the registry, provided the respective principal record is sufficient to show the error, and that it is possible to correct it in accordance therewith.

ART. 255. Registers can not correct material errors committed wi out the consent of the interested party possessing the recorded doc ment, or in default thereof, without a judicial decree, in the followi cases:

1. In records, cautionary notices, or cancellations, the documents which are not on file in the office of the Registry.

2. In entries of presentation and notes, when said errors can not l proved by the respective principal records, and the documents are n on file in the office of the Registry.

ART. 256. Errors of judgment committed in entries, records, or ca cellations, or in any other entries referring thereto, when they do n clearly appear from the same, shall not be corrected without the unan mous consent of all the interested parties and of the Register, or witl out a judicial decree ordering it.

The same errors committed in entries of presentation and notes ma be corrected by the Register himself, when the respective principa record suffices to expose them.

ART. 257. The Register, or any of the persons interested in an entry may oppose the correction which another person requests on accoun of an error of judgment, provided that in his opinion the judgmen considered incorrect be in accordance with the deed to which the entry refers.

The question arising in this connection shall be decided by a declaratory suit.

ART. 258. When the errors, material or of judgment, produce the nullity of the record, in accordance with Article 30, they can not be corrected, and the nullity thereof shall be demanded and declared by the proper Court in the suit instituted for this purpose.

ART. 259. A material error shall be considered committed for the purpose of the preceding Articles, when some words are unintentionally written for others, when the statement of some detail is omitted not causing its nullity, or when mistakes are made as to surnames or amounts in transcribing them from the documents, without thereby changing the general sense of the record or any of its parts.

ART. 260. An error of judgment shall be considered committed when, in expressing in the entry matters contained in the deed, their sense is altered or varied, this error not necessarily producing nullity in accordance with the provisions of Article 30.

ART. 261. Material errors which are committed in the writing of entries can not be remedied by means of corrections, scratches or erasures, nor by any other means except by a new entry, in which the error committed in the first one shall be clearly stated and corrected.

ART. 262. Errors in judgment shall be corrected by means of a new entry, which shall be executed by the presentation of the document already recorded if the Register acknowledges his error or if the Judge or Court declares it; and by virtue of a new document if the error is

caused by the vague, ambiguous, or incorrect language of the original deed, and the parties agree thereto, or it is so ordered by a judicial decree.

ART. 263. Whenever a correction is necessary on account of an error of any kind committed by the Register, and it can be made by virtue of the same document previously presented, all the expense and damages caused shall be defrayed by the Register who committed the error. Should the one who committed said error not be the same one making the correction, the latter may demand of the former the payment of the corresponding fees, according to the schedule in force, for the new record and other work.

If to make the correction a new document is necessary all expenses shall be defrayed by the persons interested.

ART. 264. The corrected part shall only be effectual from the date of its correction, without prejudice to possible rights of third persons to institute proceedings on account of the falsity or nullity of the document to which the entry refers, which contained the error of judgment, or an account of the entry itself.

TITLE VIII.

ADMINISTRATION AND INSPECTION OF REGISTRIES.

ART. 265. Registries of property shall be under the jurisdiction of the Colonial Department, and their affairs, as well as those of the Notaries, Civil and Marriage registry, and Mercantile registry, shall be in charge of the Registry and Notarial Division established by this law.

ART. 266. The personnel of the Division mentioned in the preceding Article shall consist of one chief, at an annual salary of 10,000 pesetas; two clerks, one first, at 8,700, and one second, at 7,500; three assistants, one first, at 6,000 pesetas, one second, at 5,000, and one third, at 4,000.

Said Division shall also have four copyists: Two first, at an annual salary of 2,000 pesetas, and two second, at 1,500.

Vacancies in the positions of chief, clerks, and assistants shall be filled strictly by promotion, in accordance with the grades previously established, and those of the lowest assistants by competitive examination. The vacancies in the positions of copyists shall be filled in the same manner. The Government may, reserving the privileges which this paragraph provides, in case of vacancies, for the good of the service and with the consent of the full Council of State, abolish one or more of the positions in the Division; the persons filling the same to receive two-thirds of the salary they were receiving until they are reinstated with the same salary and privileges.

ART. 267. The officials of the Division can not be removed by the Government without just cause, with reference to the fulfillment of the duties of their positions, by virtue of proceedings instituted for this

purpose and after consulting the corresponding Division of the Council of State. An opportunity must be given the interested party to make an explanation in writing regarding the matter which gave rise to the proceedings.

ART. 268. It shall be the duty of the Registry and Notarial Division:

1. To transact, directly with the Colonial Minister and through the Chief of said Division, all business within its jurisdiction, and to propose the measures necessary to consolidate the Registries of Property in the colonies and for the faithful observance of this law and of the regulations which may be enacted for its execution.

2. To execute such papers as may be prepared to fill vacant Registries, and for the holding of competitive examinations, when they are necessary, as well as those for the discharge of employees of the Division, or of Registers making the final disposition necessary in each case in accordance with the law.

3. To decide administrative appeals on the determination of documents made by Registers and the doubts which arise in the minds of said officials regarding the interpretation and execution of this law or of the regulations, provided they do not require dispositions of a general character which must be made by the Secretary of the Colonies.

4. To form and publish statements relating to transfers of property, in accordance with the data received from the Registers.

5. To exercise a general inspection and supervision of all the Registries in the Colonies, through the Presidents of the proper Audiencias, and even through Judges of First Instance, or Municipal Judges delegated to the inspection of Registries, and through the Registers themselves, when it is deemed advisable for the good of the service.

The other duties of the Division shall be determined by the Regulations.

ART. 269. The Presidents of Audiencias shall be inspectors of the Registries within their jurisdiction and shall immediately exercise such functions through the Judges of First Instance of the respective subdistricts, or, where this is not practicable, through the Municipal Judges, who may be delegated for this purpose.

In towns where there is more than one Court of First Instance the Judge designated by the President of the Audiencia shall exercise the functions mentioned.

ART. 270. The President of the Audiencia or his delegates shall inspect the Registries the last day of each quarter, making a memorandum of the condition in which they were found.

The Presidents of Audiencias may, besides the quarterly inspection, personally or through their delegates make any extraordinary inspection they may deem advisable, either to inspect the whole Registry or only certain of its books.

For the extraordinary inspections the Presidents of Audiencias may

delegate their functions, if they deem it necessary, to an Associate Justice of the Audiencia or to a Judge of First Instance, when the usual delegate is a Municipal Judge.

ART. 271. The delegates shall transmit to the Presidents of Audiencias the statements mentioned in the first paragraph of Article 270 within three days following the termination of their inspection.

ART. 272. The Presidents of Audiencias shall transmit to the Colonial Department every six months a detailed report of the condition of the Registries which are subject to their inspection and authority.

ART. 273. Should the Presidents of Audiencias note any lack of formalities on the part of the Registers in the conduct of the Registries, or any infraction of the law or of the regulations for their execution, they shall take the steps requisite for their correction, and, in a proper case, punish them in accordance with the provisions of the same law.

If the error or infraction could be qualified as a crime, the culprit shall be placed at the disposal of the Courts.

ART. 274. Should the President of an Audiencia find that a Register has not furnished bond, or has not deposited a quarter of his fees in accordance with the provisions of Article 305, he shall immediately suspend him.

ART. 275. Should the President of an Audiencia suspend any Register he shall appoint another to temporarily fill the office, and shall give a report showing the reasons of his action to the Colonial Department.

ART. 276. Registers shall consult directly with the President of an Audiencia, or with the Judge of First Instance, concerning any doubt they may entertain as to the interpretation and execution of this law, or of the regulations which may be enacted for its application.

Should the Judge of First Instance entertain any doubt as to the decision of the question, he shall forward it, together with his report, to the President of the Audiencia.

Should the President of the Audiencia also be in doubt as to the decision of the question submitted by the Judge of First Instance or by the Register, he shall forward it to the Colonial Department.

ART. 277. Whenever the doubt which gave rise to the question of the Register prevents the entry of some principal record in the Registry of Property, a cautionary notice shall be made thereof, which shall have all the effects mentioned in the ninth paragraph of Article 42.

The decision of the question, in such case, shall be transmitted directly to the Register within the sixty days provided in paragraph 96 for the duration of said entries.

Should said decision not be transmitted within the sixty days, the notice shall continue its effect.

ART. 278. No fee shall be charged to the interested party for entering the cautionary notice mentioned in the preceding Article.

TITLE IX.

PUBLICITY OF REGISTRIES.

ART. 279. Registries shall be open to those who are known to have any interest in ascertaining the status of the real property or property rights entered or recorded.

ART. 280. Registers shall exhibit the books in a convenient place for persons who may wish to consult them, without taking them from the office and with the precautions necessary to insure their preservation.

ART. 281. Registers shall issue certificates:

1. Of entries of all kinds contained in the Registry relating to property indicated by the persons interested.

2. Of certain records which the said persons may indicate, either specifying them or referring to those of one kind or another which may exist in relation to certain property.

3. Of mortgage records and cancellations thereof made at the instance or in favor of said persons.

4. Of the non-existence of a record of any kind or of a particular kind, relating to specified property or in charge of certain persons.

ART. 282. The certificates mentioned in the preceding Article may refer to a fixed and stated period, or to everything that may have been filed since the original establishment of the said Registry.

ART. 283. The freedom or encumbrance of real property or property rights can only be proven to the prejudice of third persons by the certificates mentioned in the foregoing Article.

ART. 284. When the certificates mentioned in Article 281 are not in conformity with the records to which they refer, the latter shall be preferred, reserving the action which the person prejudiced thereby may bring to recover the proper indemnity from the Register who committed the error.

ART. 285. Registers shall not issue the certificates mentioned in the preceding Articles, except at the written request of the person who may have any interest in ascertaining the status of the realty or of the property right in question, or by virtue of a judicial order.

ART. 286. Should the Register refuse to exhibit the books or to give certificates of entries contained therein, the person who requested it may appeal to the President of the Audiencia, if he resides in the same place, or to the person delegated for the inspection of the Registry. The President of the Audiencia or his delegate shall decide after hearing the Register. If the decision is rendered by the delegate, an appeal lies to the President of the Audiencia.

ART. 287. The petitions of the interested parties and the mandates of the Judges or Courts, by virtue of which the Registers are compelled to issue certificates, must very clearly express:

1. The character of certificate demanded in accordance with Article 281, and if it is to be a literal one or an abstract.

2. The information, according to the character of such certificate, sufficient to indicate to the Register the property of persons in question.

3. The period to which the certificate should be limited.

ART. 288. Certificates shall be given of the entries in the Registry of property.

They shall be given of the entries in the Day Book also, if at the time of their issue there be any awaiting inscription in said Registry, which should be embraced in the certificate requested, and if it is a question of proving that some estate is free of encumbrances or that some interest does not in fact exist.

ART. 289. Registers shall not issue certificates of entries in the Day Book unless the Judge or Court so order, or unless it is expressly requested by the interested parties.

ART. 290. Certificates shall be literal or abstract, according as they may be ordered or requested.

Literal certificates shall consist of the respective records in full.

Certificates in abstract shall state all the circumstances contained in said records which are necessary for their validity, according to Article 30, as well as the incumbrances which at the time are a lien on the realty or recorded interest, according to the proper entry, and any other point which the interested party may designate or which is considered important by the Register.

ART. 291. Registers, after examining the books, shall issue their certificates only regarding the property, persons, or periods designated in the petition or mandate, without making reference to any other entries or details than the ones demanded, with the exceptions contained in the second paragraph of Article 288 and in Article 292, but, nevertheless, without omitting any which may be considered embraced in the terms of said mandate or request.

ART. 292. When a certificate of any given record is demanded or ordered, either literal or abstract, and the entry indicated has been canceled, the Register shall make a literal copy of the entry by virtue of which the cancellation took place.

ART. 293. When a certificate of encumbrances on realty is requested, and no encumbrance appears in the Registry in force at the time or made by the person designated, the Register shall state this fact.

If any encumbrance does exist, he shall copy it literally or in abstract, in accordance with the provisions of Article 290, and shall then add that no other encumbrance appears to be in force.

ART. 294. Should the Register be in doubt as to whether some record is in force, being doubtful also as to the validity or efficiency of the cancellation referring thereto, he shall copy both entries in the certificate, *verbatim*, whatever may be the form of the latter, stating that this was done in view of a doubt as to whether said cancellation had all the conditions necessary to produce its legal effects, and also his reasons for the doubt.

ART. 295. Registers shall issue the certificate demanded of them, the shortest possible time, but never exceeding four days for ea estate, records, or condition of the estate whether free or encumbere which are to be certified to.

ART. 296. After the period mentioned in the preceding Article h elapsed, the interested persons may apply to the President of tl Audiencia or to his delegate requesting that the delay be justified an proceeding in accordance with the provisions of Article 286.

TITLE X.

APPOINTMENT, QUALIFICATIONS, AND DUTIES OF REGISTERS.

ART. 297. Every Registry of property shall be in charge of a Registe Registers of property shall be considered public officers for all lega effects and shall be addressed as "Excellency."

They may be retired with pension at their own request on account o physical disability, duly proven, or after reaching the age of sixty-five years. After reaching the age of seventy years said retirement with pension shall be compulsory. In their classification the time they have filled the office of Register and eight years more by virtue of their profession shall be taken into account. As the regulating salary, in the absence of a higher one, for the determination of a pension, in the declaration of pensions for old age, widowhood, and orphanage, there shall be assigned those designated to Chiefs of Administration of the third class for Registers of the first class, and to Chiefs of Bureaus of the first and second classes for the Registers of the second and third classes, respectively.

The Secretary, after a report from the Registry and Notarial Division, may grant leaves of absence for a period not to exceed five years to the Registers who may request it. The first vacancy which occurs in their class at the expiration of their leave shall be filled by any Register whose leave of absence has expired, and in case he should not accept the position he shall be definitely dropped from the Corps.

The officials of the Registry and Notarial Division having been placed on the same basis as Registers of property for the purposes of Rules 1 and 2 of Article 303, the provisions of the two foregoing paragraphs shall also apply to them; it being understood that in cases of leaves of absence they shall still be kept on the rolls of the Division as supernumeraries, being promoted as if they were rendering active service, and at the expiration of their leave, occupying the first vacancy in the class they belong to, according to said rolls.

They shall also be considered as on leave should they be elected Deputies or Senators during their term of office and with the privileges allowed them in case their positions are abolished according to Article 266.

Any Register who resigns without just cause or who is removed in accordance with the provisions of Article 308, shall have no right to the privileges mentioned in the third paragraph of this Article.

Registers who cease to perform their duties because of the change or abolition of the Registry, and who are not immediately placed in another of the same or of a higher class, shall be considered as on leave of absence, and may be classified as a "cesante" (dismissed for political or economical reasons, but continuing to draw a salary), giving him credit for the time he had charge of the Registry. If, according to the time computed, he should be entitled to pay or to a temporary pension (cesantía) in accordance with the regulations governing retired classes, he shall receive the salary corresponding to his years of service and the regulating salary which he may have received or the one previously stated. If the Register on leave is appointed to another Registry of the same or of a higher class and he resigns without cause, he shall lose the time credited to him by virtue of his service in this profession, and shall therefore not receive the salary or increase of temporary pension thereof which he would have had a right to in consequence of this time.

Registers can not exchange their positions except with other Registers of the same or of the next lower class, and only when a good reason exists therefor in the judgment of the Government.

To ascend a class by exchange it is indispensable to have served in the next lower one four years or to have entered it by means of a competitive examination.

ART. 298. To be appointed Register it is necessary:

1. To be a Spaniard and a layman.
2. To be over twenty-five years of age.
3. To be a lawyer.

ART. 299. The following can not be appointed Registers:

1. Insolvents or bankrupts who have not yet received their discharge.
2. Debtors to the State or to public funds as taxpayers or in the settlement of their accounts.
3. Persons accused of crime, pending their trial.
4. Persons sentenced to correctional or punitive penalties, until they obtain their rehabilitation.

Registers who come under case 3 of this Article can not take part in the competitive examinations mentioned in rule No. 1 of Article 303.

ART. 300. The office of Register shall be incompatible with that of Senator, Deputy to the Cortes, Provincial Deputy, Municipal Judge, or Assessor, when acting in the capacity of Judge of First Instance, Mayor, or Member of a Municipal Council, Notary, and with any office or employment which carries with it similar jurisdiction, or is paid from State, Provincial, or Municipal Funds.

ART. 301. Each Registry shall have such clerks and assistants as the Register shall need, appoint, and pay, who shall discharge the duties assigned them by the Register, but under his sole and exclusive responsibility.

ART. 302. Registers shall be appointed by the Colonial Department.

ART. 303. Vacancies in the office of Registers of property whicl occur in the Colonies shall be filled in accordance with the following rules:

1. Every three vacancies occurring shall be filled by Colonial and Peninsular Registers; the first shall be filled by the Register of the highest class, and the senior one in service from among the candidates; the second by the Register who among the candidates is the senior, without regard to class; the third by the Register of a higher, equal, or the next lower class to the Registry which is to be filled, whom the Government selects, taking into consideration the qualifications of the candidates. No Register can, in competition with others having legal conditions, receive two promotions as to class in order of merit, without two years elapsing between each promotion, unless he renders a new important service well known to be worthy of immediate reward.

2. If there be no Registers of the classes mentioned in the preceding paragraphs, the vacancy may be filled by any person selected by the Government, taking into account their qualifications.

3. Registers of property who have been disciplined and deprived of promotion can in no case attain a higher class nor even be transferred to another of the same class during the time of the duration of their punishment.

4. Registries which are vacant, and have been announced in their proper order and are not desired by licensed Registers, shall be filled by means of competitive examinations, two places for these examinations being established, one in the capital of Cuba, Puerto Rico, or the Philippines, in whichever of these islands the vacancy has occurred, and another in the capital of Spain.

ART. 304. Persons who have been appointed Registers can not take possession of their office without previously giving bond, the amount of which shall be fixed by the Regulations.

ART. 305. If the person who has been appointed Register does not give the bond mentioned in the preceding paragraph, he must deposit in the official establishment authorized by law to receive such deposits a quarter of his fees until the amount of the bond required is deposited.

ART. 306. The deposit or, in a proper case, the bond mentioned in the preceding Article shall not be returned to the Register until three years after he has ceased to discharge his duties, during which time the Judge of First Instance of the proper subdistrict shall make the announcement in the official papers of the respective colony, and in the "Gaceta de Madrid," so that it shall reach all persons who may have some action they may wish to bring against said Register.

ART. 307. The bond of Registers and, in a proper case, the deposit shall be subject, until it is restored, to the liabilities incurred by them by virtue of their office, which shall have preference over any other obligations of said Registers.

ART. 308. Registers can not be removed nor transferred to other Registries against their will, except by virtue of a judicial order, or by

the Government in accordance with proceedings instituted by the President of the Audiencia, after hearing the interested party and a report from the Judge of First Instance of the subdistrict.

To permit the removal or transfer by the Government the proceedings must show that some wrong has been committed by the Register in the fulfillment of his duties, or which lowers him in the eyes of the public, and the proper Division of the Council of State shall also be heard.

ART. 309. As soon as Registers take possession of their office they shall propose to the President of the Audiencia the appointment of a substitute to take their place during their absence or illness, having the right to select for this position either one of the officials of the Registry or any other person in whom they have confidence.

If the President of the Audiencia is satisfied with the person proposed he shall immediately appoint the substitute. Should he be not satisfied, because of some serious reason, he shall order the Register to propose some other person.

The substitute shall discharge his duties under the responsibility of the Register, and shall be removed at any time the latter may request it.

ART. 310. Registers shall at the end of each year make six detailed statements:

The first, of alienation of realty made during the year, their liquidated prices, and the fees paid on them into the Public Treasury.

The second, of rights of use, use and occupancy, servitude, annuities (censos), or any other property rights in realty, with the exception of mortgages, their value in principal and income, and the fees paid on them into the Public Treasury.

The third, of mortgages created, number of estates mortgaged, amount of the principal secured thereby, the cancellations of mortgages which have taken place, number of estates released, amount of capital returned, and fees paid into the Public Treasury.

The fourth, of loans, notwithstanding that they have been embraced in the preceding statement by reason of being mortgage loans, their number, amount of principal loaned, and interest stipulated and fees paid into the Public Treasury.

The fifth, of the estates the ownership or possession of which has been recorded in the Registry for the first time, their value, if it appears, and their superficial area.

The sixth, of the number of documents presented, old and new, proceedings instituted, certificates issued, and fees received for all the services rendered.

The regulations shall contain the other requirements which said statements must contain, and the manner of drafting them.

ART. 311. Registers shall transmit the statements mentioned in the preceding Article to the Presidents of Audiencias before the 1st day of April, who shall forward them to the Colonial Department before the 1st day of June, with such remarks as they may deem proper.

ART. 312. Registers shall receive the fees which are established by this law, and shall pay the expenses of keeping and conducting the Registries.

TITLE XI.

RESPONSIBILITY OF REGISTERS.

ART. 313. Registers shall be civilly liable, in the first place, on their bonds, and in the second place, with their property, for all loss or damage they may cause:

1. By not recording in the Day Book, or not entering or making a cautionary notice within the time fixed by the law of the documents presented to the Registry.

2. For any error or inaccuracy committed in records, cancellations, cautionary notices, or marginal notes.

3. For canceling without good reason any entry record or omitting the entry of any marginal note within the proper time.

4. For canceling any record, cautionary notice, or marginal note without the document and the requisites demanded by this law.

5. For any error or omission in the certificates of records or freedom from incumbrances of realty or of property rights, or for not issuing said certificates within the time fixed by this law.

ART. 314. Errors, inaccuracies, or omissions indicated in the preceding Article can not be chargeable to the Register when they are due to some defect in the recorded document itself, and provided they are not of those which are manifestly and according to Article 19, number 9 of Article 42, and Articles 100 and 101, would have caused the denial or suspension of the record, entry, or cancellation.

ART. 315. The correction of errors committed in entries of any kind, which are not due to others committed in the respective deeds, shall not free the Register from the liability which he may incur for the damage that may have been caused by said errors before they were corrected.

ART. 316. The Register shall be liable on his bond and with his property for indemnities and fines which may arise through the acts of his substitute during the time the latter has charge of the Registry.

ART. 317. The person who, by error, malice, or carelessness of the Register, should lose a property right or the action to recover it, may immediately demand that the Register refund the value of what he has lost.

The person who, for the same reasons, loses only the mortgage of an obligation, may either demand of the Register that he create a mortgage equal to the one lost, or that he immediately deposit the amount, thus securing said obligation when it falls due.

ART. 318. The person who, through error, malice, or carelessness of the Register, is released from some recorded obligation, shall be jointly responsible with the Register for the payment of the indemnity for which the latter may be liable by reason of his error.

ART. 319. Whenever in the case of the preceding Article the Register indemnifies the person damaged, he may bring an action to recover the amount paid against the person who, through his error, was released from the recorded obligation.

When the person damaged brings his action against the person benefited by said error, he can not proceed against the Register unless he does not obtain the indemnity sued for, or obtains only a part thereof.

ART. 320. The civil action which, in accordance with Article 317, the person damaged brings on account of the errors of the Register shall not prevent or arrest a penal action, which in a proper case may be instituted in accordance with the laws.

ART. 321. Any action which may be brought against the Register for the purpose of holding him liable shall be commenced and heard before the Inferior Court having jurisdiction of the Registry District in which the error has been committed.

ART. 322. Infractions of this law, or of the regulations for its execution, committed by Registers, although not causing any damage to third persons nor constituting a crime, shall be punished without the formality of a trial, by the Presidents of Audiencias, by the imposition of fines of 50 to 500 pesos.

ART. 323. Final judgments awarding damages and sentencing Registers to indemnify loss or damage shall be published in the Gaceta de Madrid and in the official papers of the proper Colony, if they are to be enforced against the bond, because the person condemned has not paid the amount of the indemnity.

By virtue of this publication, the persons who believe themselves damaged by other acts of the same Register may bring their actions, and should they not do so within the period of one hundred and twenty days the judgment shall be carried out.

ART. 324. If any actions are brought within one hundred and twenty days, the execution of the judgment shall be suspended until other final judgments in their favor are issued, unless it is manifest that the bond is sufficient to pay the amount of said claims after the judgment has been carried out.

ART. 325. Should the bond not be sufficient to pay all the claims which are considered good, its amount shall be divided pro rata among the persons who presented them.

The provisions of the preceding paragraph shall be understood to be without prejudice to the liability of the rest of the property of the Register.

ART. 326. The President of the Audiencia shall immediately suspend the Register ordered by a final judgment to pay the loss and damages, if within ten days he does not do so or make good his bond, or if he does not secure the claimants for the amount of their respective suits.

ART. 327. The person injured by the acts of a Register who does not file his claim within the period of one hundred and twenty days men-

tioned in Article 323 shall be indemnified with what remains of th bond of the Register, or with his property, and without prejudice to th provisions of Article 318.

ART. 328. If the claim for indemnity has been admitted and th amount of the bond does not appear sufficient to secure it, the Judge o Court must, at the instance of the claimant, order that a cautionar notice be made against the property of the Register.

ART. 329. Should the Register be condemned at the same time to pa damages and losses, and also to pay fines, the former shall be first paid

ART. 330. The period for the restitution of bonds must be computed from the time the interested party ceases to exercise the office of Register and not from the time he leaves one Registry and is transferred to another.

ART. 331. When a Register who passes from one Registry which requires a larger bond to another requiring a smaller one, the difference shall not be returned to him except at the time and under the conditions prescribed in Article 306.

ART. 332. The right of action to recover indemnity for the damage and loss suffered by the acts of Registers shall be limited to one year after said losses have been known to the person who may bring said action, and in no case shall it last a longer period than that indicated by the common law for the limitation of personal actions, computed from the time the offense was committed.

ART. 333. The Judge or Court before whom a Register is prosecuted for the indemnity of damages caused by his acts shall immediately advise of the action the President of the Audiencia under whose jurisdiction said Register is.

The President of the Audiencia, in view thereof, shall require the Judge or Court to order the entry of the cautionary notice mentioned in Article 328, should it be deemed necessary and should it not have already been ordered; requesting at the same time that he be informed at certain intervals as to the progress of the action.

The person who during one hundred and twenty days does not prosecute the claim he has filed shall be understood to have renounced his right.

TITLE XII.

FEES OF REGISTERS.

ART. 334. Registers shall collect the fees for the entries they may make in the books, and for the certificates they issue, in strict accordance with the Schedule accompanying this law.

Acts and work for which no fees are stipulated in said Schedule shall not be entitled to any compensation.

ART. 335. The fees of the Register shall be paid by the person or persons in whose favor the record or entry of the interest is directly made.

ART. 336. When there are several persons involved in the transaction the Register may demand payment from any of them, and the person making it shall have the right to recover from the others the part he may have paid on their account.

In any case the fees may be recovered judicially, but the entry shall never be refused or suspended on account of nonpayment.

ART. 337. Entries made in the indices and in any of the auxillary books kept by Registers shall not be charged for.

ART. 338. In the fees mentioned in the Schedule for the certificates of Registers the price of the stamped paper on which they have to be executed is not included and shall be paid for by the persons interested.

ART. 339. At the foot of every entry, certificate, or note for which fees have been charged the Register shall stamp the amount charged, quoting the number of the Schedule by virtue of which it was demanded.

When one number of the Schedule is applied to several operations it shall be sufficient to record the fees charged at the foot of the principal entry or note, quoting the corresponding number of the Schedule, it being unnecessary to record in the other work the fees embraced in said number.

ART. 340. The fees charged by Registers for certificates and records ordered by Judges or Courts in consequence of actions in which they have jurisdiction shall be classified for their exaction and collection in the same manner as the other costs of said action.

ART. 341. When a Judge or Court decides that the refusal of a Register to definitely record or enter a document is unfounded, the person interested shall not be obliged to pay the fees for the cautionary notice, or, in a proper case, for the marginal note which said Register may have placed opposite the entry of presentation at the time the document was returned, nor for the cancellation of said note.

ART. 342. When an entry is corrected on account of some error committed therein by the Register, the latter shall not receive any fee for the new entry, but without prejudice to the provisions of the second paragraph of Article 263.

If the Register who made the mistake in the entry is not the same who is to make the correction, the latter shall have a right to bring an action against the former or his heirs for the recovery of the fees due for the new record.

ART. 343. For records, certificates, and other work, for which fees may be collected, incumbent upon Registers, these officials shall charge the fees indicated in the respective numbers of the Schedule, taking into account the value of the estates, or the interest created in them, which are transferred, or to which the operations indicated refer.

ART. 344. Registers, in writing the entries, notes, and certificates, shall act strictly in accordance with the instructions and models which the regulation for the execution of this law will contain.

ART. 345. The delegates of the Presidents of Audiencias for t inspection of Registries shall carefully examine in their visits of inspe tion to see if the records are made in conformity with the models inc cated in the preceding Article, and they shall state in their report a errors of this kind they may observe, so that the Register who mak his entries more extensive than necessary or omits therein some of t details which they should contain, according to their class, may b disciplined.

ART. 346. No changes whatsoever may be made in the Schedul accompanying this law except by the enactment of another law.

TITLE XIII.

REDEMPTION FROM EXISTING ENCUMBRANCES.

ART. 347. Persons who may have any realty or property rights recorded in their favor may release them with regard to third persons:

1. From any legal mortgages or interests which have not been recorded to which they are or may be subject.

2. From charges which may not have been recorded or secured by a recorded mortgage, caused by a suit to establish or rescind an instrument, which can have no effect with regard to third persons without being recorded.

3. From the interests which, if having been recorded in the books kept by the old Recorders and Judges who received mortgages, the Register in whose charge said books are has not been able to determine the property which is affected thereby, the entries being defective.

4. From all suits to establish or rescind an instrument which can be brought, including those of the persons who may have previously recorded their titles relative to the same property or interests.

ART. 348. If, on the day this law is put into operation, the persons requesting the release have the ownership of the realty or property rights recorded in the books of the old "Anotaduría" or "Receptoría" of mortgages their request can not be complied with until they transfer the entries to the new books of the Registry.

ART. 349. For the effects of No. 1 of Article 347 shall be considered as not recorded besides the interests which are not entered in the old nor in the new books, those which have not been recorded in favor of any person nor been the object of judicial proceedings during the thirty years prior to the time this law has been put into operation, and were not entered in favor of their present owners before said period.

ART. 350. Interests considered not recorded, in accordance with the preceding Article, may be the basis of proceedings to clear the title.

ART. 351. The Judge of First Instance of the district in which the property or real interests are situated to which said proceedings refer is the only one who may declare it.

ART. 352. If the proceedings to clear the title of an estate situated in two or more districts is demanded, the Judge of competent jurisdiction shall be the one of the district in which is located the principal part thereof, such part being considered the one which contains the residence of the owner, or if there be none, the workrooms, and if there be no workrooms the part having the greatest area.

ART. 353. If the property to which the proceedings to clear the title refer be a railway, canal, or other work of a similar nature, or having a resemblance thereto, which crosses several districts, the principal part shall be considered such part, for the effects of the preceding Article, in which is situated the place from which the work starts.

ART. 354. In the proceedings for redemption may also be included, in the manner prescribed by Article 347, general mortgages established in accordance with prior legislation which are in force when this law is put into operation, viz:

1. In favor of married women, on the property of their husbands, for the dowry and personal property in addition to the dowry which has been delivered to them.

2. In favor also of married women, on the property of their husbands, for the dowry and donations by reason of marriage settlements which the latter may have made to them.

3. In favor of children, on the property of their parents, for the property which may be set apart.

4. In favor of children who are still under parental authority, on the property of their parents, for the property of which the latter are administering or enjoying the use.

The persons in whose favor these general mortgages stand can not demand the creation of a special mortgage.

ART. 355. The mortgages mentioned in the preceding Article, which are in existence on the day this law is put into operation, shall continue in force in accordance with prior legislation, for the time the obligations which they secure hold good, with the following exceptions:

1. When, by the consent of the parties or of the debtor, they are replaced by special mortgages.

2. When the married woman or children, being of age, consent to the extinguishment, reduction, subrogation, or extension of the legal mortgage.

3. When legal mortgages have no further effect with regard to third persons, by virtue of a decree issued in the suit for clearing the title, as established in this title.

ART. 356. Persons who, on the day this law is put into operation, nay have their property encumbered by some implied mortgage, as nentioned in Article 54, may at any time demand of the person holdng said mortgage that he accept in its place a sufficient special and lefinite mortgage.

Should said person refuse to accept the mortgage offered, or shoul. he accept it and the persons interested do not agree as to the amoun of the obligation to be secured, or as to the insufficiency of the prop erty offered in security, the Judge or Court shall decide the matter i the manner prescribed by Article 165.

ART. 357. The provisions contained in the preceding Articles do no alter or modify the preference allowed by law in the property othe than realty or property rights therein, to those persons in whose favo legal mortgages have been created.

ART. 358. Registers of property have charge of the preparation o proceedings for clearing title.

ART. 359. A single proceeding for clearing title may be instituted for all the property comprised in the jurisdiction of the Registry, provided said jurisdiction embraces one subdistrict.

ART. 360. If the jurisdiction of a Registry comprises two or more subdistricts one proceeding shall be instituted for each subdistrict in which is situated the property which it is desired to clear.

ART. 361. The practice of proceedings for clearing title shall be in accordance with the following rules:

1. The interested person shall present to the proper Register a petition for each proceeding instituted.

2. In the petition shall be described the property or property rights the clearing of which is requested, with a statement of the encumbrances thereon and which are to remain in force, notwithstanding the clearing of the title, the legal mortgages and unrecorded interests, as well as all actions to establish or rescind title which may be brought against the property, if there be any and they be known; the names of the persons interested in said mortgages, interests, and actions, and their domiciles, if they be known; the names of the wife and children of the petitioner, should he have any, giving their age, status (whether married or single), and domicile, and the names of the persons who, during the twenty years immediately preceding, may have owned, according to the Registry, said property or interests; and the petition shall be made that one hundred and eighty days be fixed, either to request the creation of a special mortgage to replace the general one or to exercise the rights and actions which the persons referred to, or any others, may have, with a warning that, should they not be brought within said period the said legal mortgages, rights, or actions mentioned shall be considered as extinguished with regard to third persons who may subsequently acquire the ownership or a property right in any of the property cleared.

3. The Register shall certify at the end of this document as to the conformity of its contents with the entries in his books, should they so conform, or as to any differences which may exist.

Should the differences be material, he shall return the document to the interested party for its correction, or so that he may make use of his privilege.

Should the differences be immaterial, or should those it did contain have been corrected, the Register shall consent to the proceedings asked for in the petition to clear title, and shall make a report to the Judge of First Instance of the proper subdistrict.

4. In case the clearing of an estate located within the jurisdiction of several Registries is requested, the Register who institutes the proceedings shall notify those of the other jurisdictions, so that they may issue the certificate prescribed in the preceding rule, each one for the part of the estate which corresponds to his office, for which purpose the former shall transmit a complete copy of such part of the petition as may be necessary.

5. The following shall be notified personally or by means of a notice in accordance with the provisions of Articles 246, 247, 250, 251, 252, and 253 of the Law of Civil Procedure of the Philippines; 262, 263, 266, 267, 268, and 269 of the same law for Cuba and Puerto Rico:

First. The wife and children of the petitioner, should he have any, and, if they be minors, their guardians, or in the absence of such, the representative of the Department of Public Prosecution.

Second. The persons, if there be any, or their legitimate representatives, who appear from the document clearing the title or from the Registry, interested in any legal mortgages, rights, or actions which should be extinguished on clearing the title.

Third. The persons, if they exist, who during the last twenty years may have had, according to the Registry, the ownership of the property or interests which it is desired to clear.

6. In notifying each person interested of the request of the petitioner, a notice shall be delivered to each, signed by the Register, stating:

First. The name, surname, domicile, status (whether married or single), and profession of the petitioner;

Second. The property described in the petition for clearing the title;

Third. A designation of the part of the property which he desires to clear, should it not be the entire property;

Fourth. The kind of legal mortgage, interest, or action in which the person notified may be interested, and

Fifth. The period of one hundred and eighty days allowed in which to bring an action and the Court before which the suit must be instituted.

7. The notices shall be made by said Register in accordance with the above-mentioned Articles of the Law of Civil Procedure, if the persons notified reside in the same town where the Register is located.

Should they reside outside of said town, but within the jurisdiction of the Registry, the Register shall send a communication to the proper Municipal Judge, so that he may order the Secretary to make said notification. Should they reside outside of the jurisdiction referred to, the Register shall communicate the fact to the Judge of First Instance of the subdistrict, so that the latter may issue the necessary letters requisitorial.

8. When the estate which it is desired to clear is mortgaged in fav of the Public Treasury, the notification shall be sent to the Govern of the proper Province, or to the high official having jurisdiction of t matter which served as a basis for the mortgage.

9. Notifications to other persons who may be interested shall be mad by means of a proclamation, posted in the usual places in the tow where the Registry is established and where the property to which th clearing of title refers is located, said edicts being also published i the official papers of the respective colony.

The proclamations prescribed in the preceding paragraphs shal state:

First. The name, surname, residence, status (whether married or single), and the profession of the petitioner.

Second. A statement of the estates which the latter desires to clear, indicating their location, name, number, area, and boundaries, the deed referring to their last acquisition, and the name of their former owner.

Third. The encumbrances on said property and the ones which are to remain in force notwithstanding the clearing of title.

Fourth. Legal mortgages, interests, or actions to which they are or could be subject, according to the petition of the claimant, and which are to be extinguished by the clearing, should no objections be made.

Fifth. The period of one hundred and eighty days in which to file the claims in the Court of First Instance to which the Registry corresponds, with the proper notice.

10. The period of one hundred and eighty days shall be computed from the date of the official papers in which the proclamation is published, provided all the notifications prescribed in rules 7 and 8 have been made prior thereto. Should they not have been made, the one hundred and eighty days shall be computed from the last notification made, for all interested persons who wish to file some objection.

11. During the period of one hundred and eighty days the proceeding for clearing the title shall be on view in the office of the Register instituting it, so that all persons interested may examine it.

12. After the period of said one hundred and eighty days, the proceedings and all the papers showing the notices and the posting of the proclamations, together with a copy of the official papers in which the latter were published, shall be transmitted by the Register to the proper Judge of First Instance of the subdistrict.

ART. 362. Any objections which may have been presented to said Court of First Instance of the subdistrict, in consequence of the petition for clearing the title, shall not be heard until the Register transmits the proceedings, in accordance with the provisions of the preceding rule.

ART. 363. Before hearing the objections mentioned in the preceding Article, matters regarding declarations of poverty may be heard, and such as refer to the issue of copies or certificates of public documents,

which are to serve as a basis for said objections, and any others which, in the judgment of the Judge of First Instance of the subdistrict, are considered urgent.

ART. 364. Should a person request the creation of a special mortgage, a copy of the request shall be given the petitioner, proceeding in the manner prescribed by Article 165.

ART. 365. If more than one person should request such mortgages, all the objections shall be heard in one trial and, until a final decision is rendered thereon, no property shall be declared cleared.

ART. 366. If any rights and actions have been brought which affect all of the property which it is desired to clear, they shall be heard together at one trial.

ART. 367. The provisions of the foregoing Article shall only be made use of when the hearing at one trial is compatible with the nature and object of the claims.

ART. 368. In case the actions brought only affect certain estates, they shall be heard separately.

ART. 369. The procedure in the trials instituted in consequence of the objections referred to in the two preceding Articles, shall be such as are respectively prescribed by the law of Civil Procedure.

ART. 370. If no claim has been filed against the property to be cleared, or the persons who have a right to demand the creation of a special mortgage forego it, with regard to said property, or the actions brought against all of the property in question have been ended, or if a part thereof is not affected by the objections filed, the Judge of First Instance of the subdistrict shall transmit the proceedings for clearing the title to the Department of Public Prosecution to ascertain whether said proceedings have been instituted in accordance with the formalities prescribed by this law, and to determine the property or interests which are to be cleared.

ART. 371. Should the Department of Public Prosecution find any inaccuracies, they shall be ordered corrected, as well as those which the Court should deem necessary to correct, and, after being confirmed, the judgment clearing the title shall be entered.

ART. 372. The judgment clearing the title shall state:

1. The name, surname, number, area, boundaries, and ownership of each of the estates cleared.

2. Whether it has been issued after the trial of other suits or not, mentioning such suits.

3. The fact of having created any special mortgage or mortgages for the security of interests which were previously guaranteed by legal mortgages or unrecorded incumbrances, or that said mortgages were not created on account of the renouncement of the interested parties, or because they have not been claimed, or because none existed.

4. The incumbrances remaining on the property, notwithstanding the clearing.

5. The fact that said estates are entirely free from all unrecorded incumbrances or legal mortgages, with regard to third persons who may later acquire the ownership or a property right in the same property.

The judgment shall be made public in the manner prescribed in the first paragraph of rule No. 9 of Article 361.

ART. 373. In the ten days following the publication of the proclamation in the official papers of the proper colony, an appeal may be taken from the judgment clearing the title to the Audiencia of the jurisdiction, by persons who may have been injured thereby, and who prove that by force majeure, or for other reasons, it was impossible for them to file their claim within the one hundred and eighty days mentioned in rule 10, of said Article 361.

The proper remedy by cassation may be had from the decision of the Audiencia.

Should no appeal be taken within ten days, or if the appeal taken is finally disposed of, confirming the judgment clearing the title, no appeal may be taken from the latter to the prejudice of third persons.

ART. 374. The Judge of First Instance of the subdistrict shall order that a certified copy of the judgment be issued and delivered to the person interested, so that he can present it to the proper Registry, and that the papers in the case be filed.

If an estate has been cleared which is situated in the jurisdiction of several Registries, a certified copy shall be delivered for each of them, confined to the property situated therein.

ART. 375. The Register to whom the certified copy of the judgment is presented shall make a note thereof in the special Registries for estates or interests cleared, stating briefly the contents of said judgment, so far as it refers to each estate. After this has been done, the certified copy shall be filed in the Registry.

ART. 376. In judgments clearing the title the intervention of attorneys or solicitors shall not be necessary.

The stamped paper employed shall be such as is designated by law.

Registers may demand, for the certificate prescribed in rule 3 of Article 361, the fees fixed in the Schedule accompanying this law; for the notifications which they make and, for the posting of proclamations, fees which Clerks of Courts of First Instance receive for the same work, according to the schedule in force for judicial matters, and for the entries of judgments in the special Registries of property, 50 cents for each entry.

In the Courts of First Instance the fees charged shall be in accordance with the schedule mentioned.

ART. 377. Persons who may have the ownership only of realty or property rights recorded, may clear them, in accordance with the provisions of the preceding Articles, with the following modifications:

1. In the petition requesting the clearing of the title, in the notices which are to be delivered to the persons to be notified, and in the

edicts shall be stated the date of the entries or the dates of the entries of ownership.

2. The period of one hundred and eighty days mentioned in Article 361 shall be extended to one year.

3. Notice of the petition for clearing the title must necessarily be given to the Mayor of the town located in the district where the property, which it is desired to clear, is located.

ART. 378. Persons, who neither have the ownership nor the possession of the realty or the property rights recorded, and wish to record said ownership, in accordance with the formalities mentioned in Articles 395 *et seq.*, may request their clearing in the same proceedings, which must be instituted before the Court of First Instance of the subdistrict in which the property is located, provided the instrument, the notices which have to be issued to those interested, and the edicts, contain all the details prescribed in said Articles, and in Article 361.

The Judge of First Instance of the subdistrict shall also proceed in accordance with the provisions of said Articles and Article 362 *et seq.* up to 273, inclusive, with such changes as may be indispensable for the different cases.

ART. 379. The records of ownership which are made by virtue of the judgments entered, in accordance with the proceedings referred to in the foregoing Article, shall contain a statement to the effect that the property is cleared, with a brief statement of that part of the judgment which relates thereto.

ART. 380. Persons who have recorded neither the ownership nor the possession of the realty or property rights, and desire to record only the possession, can not request the judgment clearing the title to said property, or interests, until they have obtained such record, proceeding in this case in accordance with the provisions of Article 377.

ART. 381. Property acquired through inheritance or legacy, can not be cleared until five years have elapsed from the date of their record in the Registry.

ART. 382. Exceptions to the rule contained in the preceding Article are the property acquired by legal heirs.

ART. 383. Persons who on the day this law is put into operation have several estates of their ownership encumbered by an annuity (censo), or voluntary mortgage, the principal of which has not yet been distributed among them, shall have a right to demand that it be divided among those sufficient to secure said principal three times over, in accordance with the provisions of Article 119.

If one of the estates should be sufficient to secure said sum, it can also be demanded that the lien be reduced to the same.

If two or more of the estates in question must remain encumbered, each one must be sufficient to secure three times over that part of the principal which it guarantees.

ART. 384. The creditor or owner of the annuity (censualista), may also demand the division and reduction of the encumbrance in the case

mentioned in the preceding Article, should the debtor or the pers paying the annuity (censatario) not do so.

ART. 385. If the estates charged with annuities (acensuados), mortgaged in the manner described in Article 383, should not be suf cient to secure three times over the principal of the annuity (censo) the debt, the division of said principal can be demanded only amon said estates, in proportion to their respective value, but not the clea ing of any of them.

ART. 386. The division and reduction of the annuities (censos) an mortgages, mentioned in the preceding Articles, shall be made b mutual agreement between all persons who may be interested in th continuance of either.

Should the parties interested not come to an agreement, or if any one of them is an unidentified person, said division and reduction shall be decreed by the Court in a declaratory suit and with the intervention of the Department of Public Prosecution, should there be any unidentified or unknown interested persons.

ART. 387. If the division or reduction of the annuity (censo) or mortgage is agreed to by all the persons interested, it must appear by means of a public instrument.

Should a suit have been instituted and a judgment rendered, the Court shall issue the proper mandate.

The annuities (censos) which have not been imposed on specified estates, but which have been secured by a general mortgage of all the property of the persons who created them, shall be understood as embraced in this Article, as well as in those following Article 383; therefore, the owner of the annuity (censualista) may demand that a lien for the annuity be created on property indicated, which is the possession of the person paying the annuity, should the latter not do so voluntarily.

ART. 388. Through the presentation of the document, or in a proper case, of the judicial mandate, the new mortgage or lien shall be recorded in the Registry according to the manner in which it has been created, and the previous ones which are to be replaced thereby shall be canceled, should they have been recorded.

TITLE XIV.

UNRECORDED DOCUMENTS AND RECORDS OF POSSESSION.

ART. 389. From the time this law goes into operation, no document or instrument which has not been recorded in the Registry shall be admitted in the ordinary or special Courts or Tribunals, in the Councils or offices of the Government, by which interests subject to record are created, conveyed, acknowledged, modified, or extinguished, according to the same law, if the object of the presentation be to enforce, to the prejudice of third persons, the interests which should have been recorded.

Notwithstanding the provisions of the preceding Article, the document which has not been recorded, but which should have been, may be admitted to the prejudice of third persons, if the object of the presentation be only to corroborate another subsequent instrument which had been recorded.

This document may also be admitted, if it is presented to demand a declaration of nullity and consequent cancellation of some entry which prevents the record of said document.

ART. 390. To facilitate the compliance of the preceding Article, to owners who lack a recorded title of ownership, no matter at what period the acquisition took place, they shall be permitted to record their interest by previously proving their possession, before the Judge of First Instance of the place where the estates are located, with the consent of the Department of Public Prosecution and citation of the adjacent property owners, should they desire to record the absolute ownership of some estate, and with the citation of the owner or other participants in the ownership, should they desire to record some property right.

If the estates are located in a town or township where no Judge of First Instance of the subdistrict resides, said proceedings may be held before the proper Municipal Judge, with the consent of the representative of the Public Prosecutor.

The intervention of the Department of Public Prosecution shall be limited to seeing that the formalities of law are observed in the proceedings.

ART. 391. In the preparation of the papers to which the preceding Article refers, the following rules shall be observed:

First. The document in which the admission of the proceedings is requested shall contain:

1. The nature, location, area, boundaries, name, and incumbrances on the estate, the possession of which it is desired to prove.

2. The legal nature, value, conditions, and incumbrances on the property right, the possession of which is in question, and the nature, location, boundaries, and name, should it have any, of the estate on which such right exists.

3. The name and surnames of the person from whom the realty or interest was acquired.

4. The length of time the possession has been had. The circumstance of demanding a written title or the difficulty of finding it, should exist.

Second. The proceedings shall be held in the presence of two or more witnesses, landowners of the town or municipal district in which the estates are located.

Third. The witnesses shall prove that they have the qualifications mentioned in the preceding rule, presenting the document necessary for this purpose.

They shall limit their testimony to the statement that the person who instituted the proceedings possesses the estates in his own name,

and to the time of said possession, and they shall be responsible for any damage they may cause by the inaccuracy of their depositions.

Fourth. The person who desires to have his possession recorded, shall present a certificate of the Mayor or official intrusted with the collection of land taxes in the town of the municipal district in which the estates are located. This certificate shall clearly set forth, in accordance with the assessment roll, sworn statements or documents presented by the taxpayers, or other data from municipal offices, that the person interested pays the taxes as the owner of the property, stating the amount paid on each estate, if it appears, and should this not be possible, it shall be stated that all of them were taken into account at the time of the last assessment.

When no quarterly payment of taxes has been made because the acquisition has been recent, the person from whom the realty was acquired shall be notified of the proceedings, or his heirs, so that they may declare whether they have any objections to make against its record.

If the person requesting it is an heir of the previous possessor, he shall present the last receipt for the taxes which may have been paid, or any other document showing that the payment was made.

Fifth. If the owners of the contiguous estates, or the part owner of the property or interests in an estate, who must be cited, are absent, and their whereabouts are known, the Court shall cite them by means of a communication, if they reside in the colonies, or he shall address himself through the Colonial Department, if the persons are to be found in the Peninsula, or in any of the other colonies. If their residence be in some foreign country, the communication shall be addressed through the same official channels to the consul of the country in which they are residing, requesting them to appear in person or by proxy within the period deemed convenient, according to the distance, and which can not be less than ninety days, computed from the date of the notice.

If their whereabouts are unknown, they shall be cited by means of official edict published in the official papers of the proper Colony, and within the period of ninety days; and, if at the end of this period the persons cited should not appear, the Court shall approve the proceedings and order that the record of the interest be made without prejudice to the interests of said contiguous owners or part owners, and stating that the latter have not been heard in the proceedings.

The record shall in such case also contain said statement.

Sixth. Any person, who believes that he has a right to the estates or a part thereof, the record of which is requested through an information as to possession, may institute a declaratory suit to enforce it before the Court of competent jurisdiction.

The interposition of this claim and its entry in the Registry shall suspend the course of the proceedings with regard to the information, or the entry thereof, should they already have been concluded and approved.

ART. 392. Should the notice drawn in accordance with the form prescribed in the preceding Article, be sufficient, and there be no opposition by a person having a right thereto, or such a position as was made, having been abandoned, the Court shall approve the proceedings, and order that the record requested be made in the Registry without prejudice to a third person having a better claim.

The possessor who may have acquired the decree mentioned in the preceding paragraph, shall present to the Registry, in requesting the proper record, the original papers in the case which have been turned over to him for this purpose, being permitted to transmit therewith a copy of the same on common paper, should he desire to keep them, which, after being compared by the Register and the certificate of comparison attached thereto, shall be returned to him, the original in all cases being filed.

ART. 393. Registers, before recording any estate or interest by virtue of the notices prescribed in the three foregoing Articles, shall carefully examine the Registry to ascertain whether it contains any entry relating to the said realty, which may be totally or partially canceled in consequence of said record.

Should he find any record of acquisition of ownership or possession not canceled, and which is in contravention to the fact of possession justified by the judicial information, he shall suspend the record, enter a cautionary notice, if requested to do so by the person interested, and shall transmit a copy thereof to the Court which approved said information.

The Judge, thereupon and on the citation and consent of the persons who, according to said record, may have some interest in the realty, shall confirm or revoke the decree of approval, in either case communicating the decision rendered to the Register so that he may either make the record or cancel the cautionary notice.

If the persons who should be cited are absent, the formalities prescribed by rule No. 5 of Article 391 shall first be complied with.

Should the Register find uncanceled any record of an annuity (censo), mortgage, or any property right in the estate which should be recorded, he shall make the entry of possession requested by virtue of judicial information, but he must state therein the existence of such record.

Entries of possession shall be converted into records of ownership when they have the following requisites:

1. That twenty years have elapsed since the date of entry.

2. That the conversion of the entry of possession be announced by means of a proclamation in the proper Official Bulletin, so that persons interested, who consider themselves prejudiced thereby, may object by bringing the proper action within the period of thirty days; and

3. That after the periods mentioned in the preceding paragraphs having elapsed, no entry or note exists in the Registry indicating that the prescription has been interrupted.

For this purpose, if the interruption be a natural one, it shall be proven in a summary procedure before the Judge of the Municipality where the property is located, the cause thereof, and how the possession ceased on that account for more than one year; and the certified copy having been issued, the proper note shall be made at the margin of the entry of possession. If the possession has been civilly interrupted, it shall be so stated in the Registry, either by means of a marginal note made by virtue of a communication from the Court, in which the citation of the person possessing the property shall be copied, or by reason of the presentation of a certified copy of the agreement, either by means of a cautionary notice of the claim, the effects of which shall retroact to the date of the presentation to the Registry of the copy of said agreement, or by the record of the instrument which contains the express or implied acknowledgment of the right of the owner by the person in possession. Thirty days after the twenty years have elapsed the Registers shall, at the instance of the persons interested, make the proper record of conversion, if the requisites mentioned in the preceding paragraph have been complied with.

ART. 394. Records of possession shall contain all the details mentioned in Article 391, and also the names of the witnesses who may have testified, the result of their depositions, the result of other investigations made in the proceedings, the opinion of the Department of Public Prosecution, and the special circumstances of the record, according to its character, so far as they appear from the papers in the case.

If the twenty years calculated from the date of the entry have not elapsed, or the requisites mentioned in Article 393 of this law have not been complied with, the entries of possession shall have the legal effect embraced in the provisions contained in the following paragraphs.

The period of possession which appears to have elapsed at the time said entries are made shall be computed for the prescription which does not require a just title, unless a person prejudiced thereby denies it, in which case said period of possession must be proven in accordance with the common law.

Entries of possession shall prejudice or favor third persons from the date of their record, but only with regard to the effects which the laws attribute to mere possession.

The entry of possession shall not prejudice the person who has a better right to the ownership of the realty, although his title has not been recorded, unless the prescription has confirmed and secured the claim recorded. Between the parties the possession shall be effectual from the date prescribed by the common law.

The provisions contained in the preceding Articles, regarding the entries of possession, can not be applied to mortgage rights, which can not be recorded unless an instrument in writing is presented.

ART. 395. Any person in possession, who should not have a written title of ownership, without regard to the period the acquisition took

place, may record said ownership by complying with the following formalities:

1. He shall present to the Judge of First Instance of the subdistrict in which the estates are located, or to the one in whose district the principal part thereof is located, if it is an estate situated in various subdistricts, explaining the manner in which he acquired them, and the legal proofs which he can offer of said acquisition, and requesting that, with the citation of the person from whom said property was acquired or his legal representative, and of the Department of Public Prosecution, the proofs mentioned be admitted and his right declared.

2. The Judge shall give a copy of this document to the Department of Public Prosecution, shall cite the person from whom the property was acquired or his legal representative, should he be known, and the persons who have any property right in said property; he shall admit all the pertinent proofs which may be offered by the claimant, by the interested persons cited, or by the Department of Public Prosecution, within the period of one hundred and eighty days, and he shall issue a call for the unknown persons whom the desired record might prejudice, by means of proclamations posted in public places, and which shall be published three times in the official papers of the proper colony, so that they may appear, if they desire to substantiate their claim.

If the persons to be cited should be absent, the procedure established for citations in rule number 5 of Article 391 shall be pursued.

3. After said period has elapsed, the Judge shall take cognizance of the claims and proofs submitted, in writing, to the Department of Public Prosecution, or to others taking part in the suit, and in view of their allegations, and deciding on said proofs with an impartial judgment, he shall declare whether the ownership of the property in question is proven or not.

4. The Department of Public Prosecution, or any of the persons interested, may appeal from this decision, and, should they do so, the appeal shall be conducted in the manner prescribed for proceedings in the nature of a demurrer by the Law of Civil Procedure.

5. If said decision is agreed to or confirmed, it shall be sufficient title for the record of the ownership.

6. When the value of the realty does not exceed 1,000 pesos, the proceedings which, according to rule 3, must be submitted in writing to the Department of Public Prosecution and to the persons interested, shall be oral; and the appeal, should one be taken, shall be in accordance with the procedure established for these appeals in actions for small amounts.

ART. 396. The person in possession of a property right to some estate, the owner of which should not have recorded said ownership when this law is put into operation, may request the record of his interest in the manner prescribed by the regulations, as well as a cautionary notice of the interest of the owner, in accordance with number

9 of Article 42, until the owner of the realty, on being cited, comes forward to contradict the entry or to record his property within the period of thirty days.

The owner of the encumbered estate can not impugn this entry unless he requests at the same time a record of ownership, presenting the proper deed or proof of having commenced proceedings disputing title and demanding the judicial declaration of said ownership.

Should the owner of the realty be absent, the formalities provided for citations in rule number 5 of Article 391 shall first be complied with, and the time shall be computed from the date of the notice.

TITLE XV.

EFFECTS OF ENTRIES CONTAINED IN THE OLD BOOKS AND OF THE RESTORATION OF THOSE RENDERED USELESS BY FIRE OR OTHER ACCIDENTS.

ART. 397. The entries contained in the Registries existing in the offices of "Contadurías," "Anotadurías," or "Receptorías" of mortgages shall have their proper effect, in accordance with the law in force before the mortgage law was put into operation in the respective colonies, if said entries have been or are transferred to the new books of the Registry.

Records of annuities (censos), mortgages, liens or any other property right contained in said books existing in the offices of the Contadurías, Anotadurías, or Receptorías of mortgages must be transferred to the books of the new Registry within the period of one year from the time of the promulgation of this law. This transfer must be made at the request of an interested party.

If the transfer is solicited through a request addressed to the Register within said period, the effects of the transfer shall retroact to the date of the entry in the old books, this fact being stated in the new ones. If the request is filed at a subsequent date it can not prejudice third persons.

If the encumbered estates should not be recorded either in the old or in the new Registry, the record of ownership or possession must first be made in the manner prescribed by the present laws in force, at the instance of the person who has the property right in question recorded in his name.

If the person who requests the transfer is not the same one in whose favor the lien is recorded, he may have it recorded in his name, either by presenting the deeds of ownership proving his right, or by proving that he is actually in possession thereof, by any of the means indicated in Title XIV of this law; but the person, or his legal representatives, who, according to the Registry, appears to have an interest in the lien, must always be cited, either personally or through a proclamation.

If, in transferring the records referred to in the present Article, some of their details are taken from additional notes presented by the inter-

ested parties, the part of the new records referring to said details, shall not prejudice third persons.

In case the details presented refer to the boundaries of an agricultural estate, that part of the record relating thereto shall prejudice the owners of the contiguous land who may have signed it.

Owners of annuities (censos), incumbrances, and other interests who request the transfer of the records contained in the old Registries, within the time fixed by this Article, shall be exempted from the payment of the fees, fines, and charges for delay in the proceedings which took place before said period had elapsed, and for the entry made in their favor, and they shall pay the Registers only half the usual fees, it being understood that in the new Registry not more than one entry shall be made for each incumbrance of property right, which shall include the old one, the conveyances which took place thereafter, and the interest of the person in possession.

Records contained in the books of the Registry, prior to said date, shall have all the effects of entries subsequent thereto with regard to the interests they set forth, although the former may lack some of the details which, under penalty of nullity, are required by Articles 9 and 13 of this law, and although they are not transferred to the new books.

ART. 398. If, on account of some accidental or intentional destruction, the books of the Registry of property are totally or partially destroyed, the judicial authority usually delegated to inspect the Registries, shall without loss of time make an extraordinary inspection with the assistance of the Register or his substitute, and, in the absence of both, with the Department of Public Prosecution, and the report thereof shall contain as clearly as possible the condition of the Registry, stating the books or parts thereof which have been destroyed and the measures provisionally adopted to attend to the public service.

When the inspection has been made, the said official shall, as soon as possible, transmit to the Colonial Minister a copy of said report through the President of the Audiencia.

ART. 399. Instruments which can not be definitely recorded on account of the loss or destruction of the books of the Registry, shall be entered as a cautionary notice, in accordance with number 8 of Article 42.

The entry made for this reason shall cease to be effectual after the termination of the period mentioned in the following Article, if the instruments proving the acquisition of the estate or right have not been entered before this law is put into operation.

ART. 400. The records, entries, marginal notes, and other memoranda contained in the books of the old offices of the Contadurías, Anotadurías, or Receptorías of mortgages, or in those of the Registry of property, which have been totally or partially destroyed by fire, flood, or other casualty due to force majeure, accidental or intentional, may be restored, by again presenting the documents to which said entries referred, within the period of one year, and in accordance with

the rules prescribed by this law. The Colonial Department shall, by a special order, fix the date from which said period is to be computed for each Registry.

ART. 401. In all cases the instruments shall have to be presented which contain the memorandum showing that cognizance has been taken of them, or that they have been entered or recorded in the proper book, provided that the acquisition of the estate or right is proved, before the date this law is put into operation. When the record is copied, the Register shall write and sign on the instrument another memorandum stating this fact.

ART. 402. The other documents intended to correct the inaccuracies of the recorded instruments shall also be presented.

ART. 403. The person in possession of any annuity (censo), mortgage, servitude, or any other property right in an estate, the owner of which has not recorded nor re-recorded his ownership, may request that his interest be again recorded, provided that the acquisition of the ownership or possession of the estate can be proven by the instrument or other authentic documents presented.

The record of this ownership shall be made in accordance with the general rules, and without prejudice to the right of the owner to make additions thereto, or to correct it on the presentation of new documents.

ART. 404. The owner who does not have in his possession the instruments previously recorded, and who proves the destruction or loss of the originals or of the drafts thereof, may replace this loss at any time and again record the ownership or possession, in accordance with any of the measures prescribed by Articles 390, 391, and 395.

ART. 405. Registers can not refuse to again record instruments which have already been recorded.

Should they perceive any error which can not be corrected, they shall confine themselves to showing it, so as to avoid all responsibility. Should it be capable of correction, they shall proceed in accordance with Articles 19, 66, and 402.

ART. 406. Registers who have in the books of the old offices of Contadurías, Anotadurías, or Receptorías, records corresponding to those contained in the books destroyed, shall forward a detailed statement thereof to the office where the accident happened, within the period of one year mentioned.

Without prejudice thereto, said officials shall issue true copies of the entries or records, which the interested parties may request for the purposes of this law. For these certificates they shall receive no fees.

ART. 407. When several instruments are presented which have already been recorded, showing the subsequent conveyances of the ownership of the estate, or of any of the property rights therein, they shall all be embraced in one entry.

Estates shall be given the correlative number which belongs to them, according to the order established by the Register after the destruc-

tion. In the new entries or records, there shall be stated the number which the estate has previously had.

ART. 408. The records and other entries which are replaced in accordance with this law, from the time of the destruction of the books until the determination of the period mentioned in Article 400, shall have their proper effects, with regard to the interests they set forth, according to the present laws, from the date the new entries were made.

For all legal purposes, the date of the memorandum at the foot of the instrument stating that it has been entered or recorded, shall be considered the date of the new entry. If the instruments have been lost and the date of said note or of the records referred to therein can not be proven by any other documents, the provisions of this Article shall have no effect.

ART. 409. The new entries treated of in the foregoing Article shall only pay a fifth of the usual fees mentioned in the Schedule.

ART. 410. After the period fixed in this law has elapsed, instruments which have once been recorded or entered can be again recorded, but said records or entries shall not prejudice nor favor third persons, except from their date, and the usual fees mentioned in the Schedule shall be charged therefor. Notwithstanding, the other provisions of this law are applicable to said instruments.

ART. 411. Articles 17, 20, 23, and 34, and all others referring to the effects of not recording or entering any interest, shall be suspended, with regard to estates and interests, the entries of which have disappeared, from the date of the destruction or loss of the books of the Registry until the expiration of the period allowed.

The period mentioned in this law and in the regulations for its application for the conversion of cautionary notices into definite records, shall also be suspended. The Register shall call attention to this fact and to the present Article in any certificates he may issue regarding said estates or rights. At the termination of said period, Registers must have the new indices made, or the ones existing in the respective portion of the destroyed book, must be corrected.

ART. 412. All the acts, proceedings, and documents which the persons interested may require, to make use of the privileges allowed in the present title, shall be made on stamped paper.

FINAL PROVISION.

ART. 413. All previous provisions regarding mortgages are hereby repealed. Any provisions which conflict with those of this law are also hereby repealed. None of the articles composing this law can be repealed, except by virtue of another special law, and the appropriation law can never be considered a special law for this purpose.

The periods mentioned in this law shall be computed from the time it is put into operation.

ADDITIONAL ARTICLES.

1. The Articles referring to the Royal Fees, which do not exist at present in the Philippines, as well as those referring to taxes not yet extended to said Archipelago, shall not be applied to them until opportunity offers.

By "Municipal District" (termino municipal) shall be understood in the Philippines, the one formed by the towns where there is a Captain or Petty Governor (Gobernadorcillo); by "Municipal Judge," the Justice of the Peace or Captain or Petty Governor (Gobernadorcillo), in cases where they exercise the functions of the latter; by "Municipal Public Prosecutor," where none exists, the Agricultural Supervisor (Teniente de Sementeras).

2. In Cuba and Puerto Rico, where there is no Municipal Public Prosecutor, this official shall be replaced by the Syndic of the respective Municipal Council.

3. The two foregoing provisions shall also be considered extended to all provisions of a general character, which may hereafter be enacted for the Colonies, and in which only the technical phrases used in this law shall be employed.

4. The subsidy which had been allowed Registers of Property in the Philippines by Article 313 of the Mortgage Law, which was applied to the Philippines by Royal Decree of May 10, 1889, and which is abrogated by the present one, shall continue to be enjoyed by said officials, in the same manner and during the time they are in charge of the actual Registries; all those who are not embraced in the above-mentioned case the day this law is put into operation, shall also enjoy the subsidy, but subject to any change or suppression which the Government may decree with respect to said right, in accordance with public policy and interests.

5. The fees which notaries may charge for any purpose whatsoever, in certifying to alienations, liens, or partitions, shall be the following:

For the alienation or encumbrance of any estate, the value of which does not exceed 25 pesos, 25 cents; from 25 to 75 pesos, 40 cents; from 75 to 150 pesos, 50 cents; from 150 to 250 pesos, 62 cents.

For the procedure of records relating to the partition of inheritances, when the amount involved does not exceed 1,000 pesos, 5 pesos; from 1,000 to 1,500, 7.50 pesos; from 1,500 to 2,500, 10 pesos.

The stamped paper to be employed in the records of proceedings relating to partitions, as well as in the copies thereof, shall be that bearing the seal of the last class.

6. The fees for recording sales or liens, referred to in Article 3 of this law, in its second and following paragraphs, to be charged by Registers, shall be the following:

For recording any estate or lien, the value of which does not exceed 25 pesos, 25 cents; from 25 to 75 pesos, 40 cents; from 75 to 150 pesos, 50 cents; from 150 to 250 pesos, 62 cents.

The fees to be charged by Registers for recording partitions, referred to in the same paragraphs of the Article mentioned, shall be the same as those for short records specified in Article 7 of the Schedule annexed to this law.

For recording notices referred to in Article 390, they shall charge fees in accordance with the rates established in the first paragraph of this Article.

7. Alienations referred to in the second and following paragraphs of Article 3, shall pay as tax for transfer of ownership:

For estates the value of which does not exceed 75 pesos, 50 cents per 100.

From 75 to 250 pesos, 1 per 100.

Liens created in accordance with the same Article, shall pay for estates the value of which does not exceed 75 pesos, 12 cents per 100.

From 75 to 250 pesos, 25 cents per 100.

The tax for transferring ownership of partitions or inheritances, which do not exceed 2,500 pesos, is reduced to 50 per cent of the fees fixed by this law.

8. In order that the statistical service referred to in Article 310 of this law, and of the others of the Civil Registry and Notarial Instruments placed in charge of the Registry and Notarial Division, may be made annually without difficulty, and for the purpose of defraying the expenses of printing and other necessary expenditures, the annual sum of 1,500 pesos shall be allowed in the estimates made for the Colonies. Said expenses shall be authorized by the Chief of the Registry and Notarial Division, who shall open a special item for them, of which he shall give an account, with the vouchers, to the Colonial Secretary.

9. The Presidents of the Territorial Audiencias of the Colonies, in accordance with the data which they may demand from the Judges, Delegates, and Registers of Property, and of the administrative mortgage matters they have taken part in, shall forward to the Colonial Department at the end of each year, a report stating the deficiencies and doubts they have encountered in the application of this law. They shall state therein, in detail, all questions and points of law discussed and the articles or omissions of the law which gave rise to the questions. The Colonial Secretary shall forward these reports with the report made thereon by the Registry and Notarial Division, as well as the statistics of the Registries of property, to the Committee on Codes for the Colonies. In view of this data, of the progress made in other countries, which may be utilized in our own, and of the administrative and judicial opinions in mortgage matters, the Committee on Codes shall formulate and transmit to the Government every ten years, the reforms which (in its opinion) should be introduced.

SCHEDULE OF THE FEES TO BE CHARGED BY REGISTERS OF PROPERTY.

EXAMINATIONS OF DEEDS, ENTRIES OF PRESENTATION, AND CORRESPONDING ENTRIES.

NUMBER 1.

Pesos.

For the examination, entry of presentation, marginal note and note at the foot of any instrument referring to five estates or less, the record, entry, or marginal note of which is requested, with the exception of cancellations; by instrument being understood the document or documents necessary for an entry of presentation 0.75

NUMBER 2.

If it refers to more than five estates the following scale shall be observed:

From 6 to 10 ..... 1.00
From 11 to 20 ..... 1.50
From 21 to 30 ..... 2.00
From 31 to 50 ..... 2.50

Should it exceed this number, for the first 50, the charges shall be as specified, and for the balance, 5 centavos for each one valued at 300 pesos or more and 2 centavos for each one of a lesser value.

NUMBER 3.

When the instrument to be examined by the Register exceeds 50 folios, he shall charge for each extra folio ..... .02

NUMBER 4.

If the value of the estates or rights to which the instrument refers does not reach 300 pesos, he shall charge without regard to the number of folios it may contain, or the number of estates or rights to which it refers ..... .25

CANCELLATIONS.

NUMBER 5.

For all work, without regard to its form, which should be made at the instance of an interested party, for the cancellation or clearing of mortgages, annuities (censos), or property rights, including the entry of presentation and marginal notes, the following fees shall be charged for each estate:

If the estate or right is valued at less than 300 pesos $2.00
From 300 to 1,000 ..... 2.50
From 1,000 upward 3.75

Should the cancellation be refused or suspended, the preceding numbers of the Schedule shall be applied.

SPECIAL NOTES, RECORDS, AND ENTRIES.

NUMBER 6.

When, in consequence of the presentation no record or entry should be made but marginal notes in the old or new Registry can be made, the charge for each one shall be 50 centavos.

For each one of the notes embraced in Article 16 of the law, the same amount shall be charged.

NUMBER 7.

For each record or entry and corresponding marginal notes, not embraced in the preceding numbers, the fixed amounts established by the following rate shall be charged:

	Records or entries in full.	Records or entries in abstract.
	Pesos.	*Pesos.*
For each estate or right which does not reach a value of 300 pesos	3.00	2.70
300 to 600 pesos, exclusive	3.50	3.15
600 to 800	4.00	3.60
800 to 1,000	4.50	4.05
1,000 to 1,500	5.00	4.50
1,500 to 2,000	5.50	4.95
2,000 to 2,500	6.00	5.40
2,500 to 3,000	6.50	5.85
3,000 to 4,000	7.50	6.75
4,000 to 5,000	8.75	7.85
5,000 to 8,000	10.00	9.00
8,000 to 10,000	11.25	10.10
10,000 to 12,000	12.50	11.25
12,000 to 14,000	14.00	12.60
14,000 to 16,000	15.50	13.95
16,000 to 18,000	17.00	15.30
18,000 to 20,000	18.50	16.65
20,000 to 25,000 pesos, inclusive	20.00	18.00
Above 25,000	25.00	22.50

For the conversion into a record of an entry made on account of an error which may be corrected, and for the suspension of entries of cautionary notices, half the fees mentioned in the preceding rates shall be charged.

COPIES OF ENTRIES, CERTIFICATES, AND SEARCH FOR DATA.

NUMBER 8.

For copy of entries in the Registry, for each estate, without regard to its value, 50 centavos.

NUMBER 9.

For the first page of literal certificates $1 shall be charged, irrespective of the value of the estates or rights referred to.

NUMBER 10.

For the subsequent pages of certificates half the fees mentioned in the preceding number shall be charged.

NUMBER 11.

For each entry regarding which a certificate in abstract is issued:

If it refers to an estate of right, the value of which is less than 300 pesos, 75 cents.

If the value thereof is 300 pesos or more, 1 peso.

NUMBER 12.

When the certificates are to contain a reference stating that no entry at all or no entry of a specified class exists, regarding the estates or property rights, the fees shall be:

For the reference to each estate or right valued at less than 300 pesos, 35 centavos.

Of 300 pesos or over, 50 centavos.

NUMBER 13.

For the search in the old or new Registry, in order to make the statement, when the folio and book containing the record of the estate is not specified, or to issue the certificates referred to in the preceding numbers, for each estate and for each year to be searched, the fees designated in the following rate shall be charged, and in no case shall they exceed the amount fixed therein:

	For each year, if the search covers only a period of 30 years or less; and if it covers more than said period, for the first 30 years.	For each year exceeding 30 years, when the search covers 31 years or more.	Highest fee which can be charged for each estate, without regard to the number of years searched.
	Pesos.	*Pesos.*	*Pesos.*
For each estate, or right, the value of which is less than 600 pesos	0.05	0.01	3.00
600 to 1,000, exclusive	.06	.02	4.00
1,000 to 2,000	.07	.03	5.00
2,000 to 3,000	.08	.04	6.00
3,000 to 4,000	.09	.05	7.50
4,000 to 5,000	.10	.06	8.75
5,000 to 8,000	.12	.08	10.00
8,000 to 10,000	.13	.09	11.25
10,000 to 12,000	.14	.10	12.50
12,000 to 14,000	.16	.12	14.00
14,000 to 16,000	.17	.13	15.50
16,000 to 18,000	.19	.15	17.00
18,000 to 20,000	.20	.16	18.50
20,000 to 25,000, inclusive	.22	.18	20.00
25,000 and upward	.27	.23	25.00

NUMBER 14.

For the search, with regard to persons, for each person and year, irrespective of the number of estates or rights found, in the old as well as in the new Registry, the charge shall be 10 cents.

GENERAL RULES.

1. For the purpose of grading the fees, the value of an estate encumbered by a mortgage, is the price for which it was transferred, besides the value represented by the mortgages if they are in force.

2. The value of annuities (censos) and other liens of a perpetual, temporary, or redeemable character shall not be added to the price of the transfer.

3. When the transfer is made with a money consideration, the value of the estate shall be understood diminished to the extent of the amount of any liens there may be thereon.

4. With regard to the rights of use, and use and occupancy, their value shall be considered as the fourth part of the estate, and with regard to the mere ownership, three-quarters thereof.

5. For the charges of fees for leases, the amount to be paid during the entire period of the duration of the contract shall be taken as a basis. Should the period of duration of the contract not be determined, the basis shall be the amount for twelve years.

6. The fees to be charged for the registration or entry and marginal notes of servitude shall be 5 per cent of the value of the dominant estate.

7. With the object of enabling the Register to grade his fees in accordance with the provisions of this Schedule, he must take into account the contents of the instrument itself, not taking into consideration the value of encumbrances which are canceled in the Registry, should they be mentioned in the instrument. If the value of each estate or interest does not appear in the instrument, the person presenting it shall be required to state said value in a note on common paper, which shall be filed in the office. Should he not make this statement, the Register shall have a right to charge the highest fee of the proper scale or such fee as he may deem advisable.

8. When, for the purpose of ascertaining the value of some estate or property right which is transferred, it should be necessary to compute some lien thereon, affecting at the same time other property, the responsibility of each one of them not being determined, a memorandum on common paper shall be made in which all the estates subject to the lien shall be detailed, and the value of each one, so that the Register may make the proper calculation, computing the lien, with regard to the estate or interest which it is desired to enter, and the amount which, according to the value of the latter, it bears pro rata with the other encumbered estates. Should this statement not be presented, the Register need not take into consideration the encumbrance in question.

9. Registers of property must not charge any sum by way of fees without giving the person paying them a detailed receipt, who must sign his agreement therewith in the proper stub, which is to be kept in the office. Should he not be able to sign, a witness shall do so at his request.

PROVISIONAL ARTICLES.

1. The period fixed in Articles 361, 403, and corresponding ones of the mortgage law, applied to Cuba by royal decree of May 6, 1879, which is repealed by the present law, extended indefinitely by royal decree of May 6, 1882, is hereby declared as definitely closed after one year from the enactment of this law, the persons interested to whom these provisions refer, being able to enjoy the advantages allowed them therein within this period.

2. Registries in the Colonies, being reduced by this law to three classes, those of the fourth class, which are in existence in Cuba, shall hereafter be considered as of the third class, which shall be the status of their present employees from this date.

3. The Registry and Notarial Division, established by Article 265 of this law, takes the places of the Office of Civil Registers and Property and of Notaries which had been in existence, the present employees of which shall preserve all their rights in the Division, being subject to the other provisions referring to them which this law contains.

4. Notwithstanding the provisions contained in Article 1 of this law, regarding the creation, suppression, or alteration of the jurisdiction of Registries, matters which are pending shall be continued until their decision in accordance with the mortgage law previously in force in the respective Islands.

Madrid, July 14, 1893.

The Minister for the Colonies:

ANTONIO MAURA Y MONTANER.

TRANSLATION

OF

GENERAL REGULATIONS

FOR THE

EXECUTION OF THE MORTGAGE LAW

FOR

CUBA, PUERTO RICO, AND THE PHILIPPINES.

(1893.)

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

INTRODUCTION.

MADAME: The Mortgage Law sanctioned by Your Majesty for the Colonies, amending the real estate system, made a change in the Regulations unavoidable.

In the law the greatest respect for the original text was observed, conforming thereto, as far as practicable, in the arrangement and nomenclature of its titles and the numeration of its articles. But it is not possible at the present time, nor would it be advisable, to observe the same rule, with the exception of the recompilement of the three regulations which were applied to the Colonies into one, in the same manner in which the three laws have already been united. The subordination of the new to the old text is impossible, because the regulations being liable to change, as they are perfected daily by the teachings of experience, some parts being amended, while new cases are embraced in others, the text for the Antilles was somewhat distinct from that for the Peninsula, that for the Philippines differing still more therefrom, and separate new provisions are now in existence which must be embraced in the new text. To all this must be added the fact that, in the endeavor to improve the method, the system pursued by the law was departed from in the regulations, as if a different legal subject were in question, adopting another arrangement of the subject-matter by which its management and the attempt at agreement is made rather difficult. Perhaps the arrangement which was preferred is more perfect than that of the law, but the difference has caused confusion, which has been increased by the large number of provisions and decisions not yet incorporated in the text.

To re-establish the coördination of the regulations and the law, and to unify the arrangement of the subjects, is one of the advantages of the annexed plan.

Of the regulations enacted for the execution of the mortgage law, those for the Philippines, dated August 16, 1889, are the latest. All the provisions which have been enacted were condensed up to this date, and have been made use of in the foundation of the one now proposed. The consideration of the method indicated has suggested this choice, and all the provisions of a general character proposed up to the present time have been added thereto, harmonized to the Civil Code and to the amendments introduced in the mortgage law, and finally it is perfected,

with the rules for procedure and for the application of the new precepts contained in said law.

Some explanation of these rules at the present time appears particularly necessary, as the convenience and scope of the other innovations were explained at the time the reform of the law, which was favorably considered by the Cortes, was proposed.

The procedure permitting sellers of agricultural implements to make use of the advantages allowed them by Article 112 of the law is regulated by a detailed statement of the requisites necessary for the execution of instruments and the proper records, so as to prevent any difficulties.

With regard to the record of small estates, the provisions contained in Article 3 of the law are elucidated, perhaps unnecessarily, so that it can be well understood that contracts involving real estate, the value of which does not exceed 300 pesos, enjoy the same advantages as those regarding property rights of any kind whatsoever, and that inheritances of less than 2,500 pesos in value, when no partitions thereof take place, are governed by the same provisions as those requiring a formal act of partition.

Article 128 of the law declares that the regulations will fix the complementary details of the new procedure established for the collection of mortgage debts by Article 127 et seq. This amendment being one of the principal ones, and the manner of its application having been reserved to the regulations, it has been decided that in the instrument establishing the loan, the estimated value of the estate shall be stated, the right to new appraisements in the future being renounced, and that the day on which the obligation falls due be fixed in a definite manner; that all payments, which must be shown by notarial instruments, be recorded in the Registry by means of marginal notes, and that the petition to make the credit effective be expressed in terms commensurate with its great importance, including a copy of the instrument establishing the loan and of the certificate of the Register, which shows the actual status of the debt the collection of which is demanded.

After the formal demand for payment has been decreed, which shall be done once only, subsequent creditors shall be notified of the demand, so that they may be present when the public sale takes place, should they so desire.

The failure to attach mortgaged property does not extend to other property against which said creditor brings his action. In such case it shall be necessary to follow the proper requirements of the Law of Procedure, only shortening and simplifying them to secure the effectiveness of the mortgage.

Thirty days after the formal demand for payment has been made, a notice of the auction shall be published in the "Gaceta" of the proper Island, and after said auction has taken place, if the debtor does not demand that the estate be awarded him for the amount agreed upon, he may request other auction sales with prudent reductions of the min-

imum acceptable, reserving the total sum of all other obligations contracted prior to the mortgage security of his debt. Such provisions of the law of Civil Procedure shall be followed which are best suited to this most summary procedure to secure all rights. Article 413 of the law repeals other articles conflicting therewith, even when they do not refer to questions of mortgages, and the regulations must subordinate themselves to the letter and spirit of the latest provisions.

The entire section regulating the executory procedure for the collection of mortgage debts conforms to the ordinary system of judicial proceedings, so far as is permitted by the careful innovations which the law has desired to introduce, to release debts from the formalities and ceremonies which frequently sacrifice on the altar of fraud, that justice which it was most particularly desired to respect. We start from the principle that a mortgage record contained in a Registry defines a state of a right no less worthy of a presumption of inherent and conclusive legality than that other state which follows a decree of sale in the foreclosure action, with weaker securities and fixed or privileged exceptions and defenses. The greatest care was taken to insure the ease and efficacy of compulsory proceedings, under the responsibility of the claimant, and instead of permitting this intention, of so vital importance to credit, to be frustrated by possible contentions, which in every case would be restricted or imperfect, everything has been reserved which can and must be inconsistently interpreted, so that any person may bring the question up in a declaratory suit, which can be done at any time, and a final judgment thereon secured by the measures which are added to the ordinary procedure to insure the compliance of the same.

In establishing means to release estates from incumbrances which are not recorded in accordance with Article 349 of the law, the unjustifiable statement is made that incumbrances which are not in the possession of the person who had them recorded thirty years before, can not be the basis of said proceedings, notwithstanding that they are in the possession of his legal representatives, although not recorded.

The separation established by Article 397 of the law between records of ownership and those of mere property rights entered in the old books is explained with the greatest clearness, providing in its first paragraph that the former may be transferred at any time, and the latter, in accordance with paragraph 2, only within the period of one year, if they are to prejudice third parties.

The scope of the first and last paragraphs of the same article is also made clear, the former providing that the old entries must be transferred to the new books if they are to prejudice third persons, and the latter that, even if they are not transferred, they shall continue effective between the parties.

The necessary precautions are also adopted to prevent these provisions from being avoided, and the transfer is regulated by all the provisions appearing necessary.

The most summary procedure is ordered for the conversion of entries of possession into records of ownership. To the models which for the uniform and correct application of the law have always accompanied the regulations, models the number and variety of which for the Philippines greatly exceed those for the Peninsula, another one of marked practical convenience is added, consisting of the papers of the proceedings regarding notices of possession, so that they may comprise all the details required by the Mortgage Law, thus avoiding any difficulties which may be caused by its deficiencies. This model has no didactic character, nor is it made public for the officials who have a knowledge of the precepts to be applied, such officials being often substituted or replaced by individuals who are not lawyers. It would be useful in these cases, and will always serve as a detailed official model for interested persons, which at the same time will unify the practice and understanding of the law enacted.

Leaves of absence for Registers are regulated, avoiding their frequent recurrence in the Islands, and limiting the duration of their absence from the Islands, which was excessive; rules already in force are incorporated and there is avoided the inopportune application of provisions enacted for other officials and inappropriate to the office of Register.

The rules for leave of absence of Registers of the Peninsula are given, having absolute regard for the jurisdiction of the Secretary of Grace and Justice.

Regarding the new procedure which shortens the periods for general assignments and the appointment of temporary Registers, which will greatly benefit good service, the report of the full Council of State has already been heard, whose proposals, with slight modifications, are embodied in the new regulations.

The previous ones contained many references to various matters which pertained to other legal matters, a system which hinders the dispatch of business. This evil is avoided by reducing the citations to such provisions which are not pertinent to the subject-matter of the regulations, embodying those referring to competitive examinations for Registers of property, and for positions in the Notarial and Registry Division, at the same time introducing in the latter some reforms suggested by experience.

The statistical service requires a great impetus because of its great usefulness, and this is secured by a slight increase in the clerical force of the proper Division of the Department. The interesting information which is to be gathered and arranged in the future, with a comprehensiveness and scope which this service does not possess among ourselves, suggests, perhaps, the publication of "Annual Reports" which would contribute to a general knowledge of our colonies, greatly assisting the mission of the governing officials, as well as cementing the relations between them and the Peninsula.

Temporary provisions corresponding to the character of the subject-matter regulate the classification and the proper bonds of Registers;

the period of one year during which implied mortgages in Cuba will be open to the provisions of the new law, the closing of "Anotadurias" in the Philippines, the unification of the eligible lists for filling Registries, and some other questions such as that of "haciendas comuneras" in Cuba.

As the Mortgage Law must be put into operation, twenty days after its publication in the respective official Gazettes has been concluded, in accordance with the provisions contained in Article 1 of the Civil Code and of the Royal Decree of July 31, 1889, the annexed Regulations, indispensable for the execution of the former, will become effective simultaneously, a distinct period of twenty days not being counted for this purpose. In Cuba, in Pueto Rico, and in the Philippines, respectively, and in each case the substitution of the actual provisions for the new ones, of the law as well as of the regulations, must take place simultaneously.

The unextendible time in which these Regulations are to be put into operation, as has just been stated, and the legal necessity of submitting them to the Council of State to make them final, requires that they be published at present as provisional in character, as has been done for similar reasons.

In view of the foregoing considerations, and in accordance with the Council of Ministers, the undersigned has the honor to submit, for the approval of Your Majesty, the following draft of a decree.

Madrid, July 18, 1893.

Madame:

At the Royal Feet of Your Majesty.

ANTONIO MAURA Y MONTANER.

GENERAL REGULATIONS FOR THE EXECUTION OF THE MORTGAGE LAW FOR CUBA, PUERTO RICO, AND THE PHILIPPINES.

TITLE I.

INSTRUMENTS REQUIRING RECORD.

ARTICLE 1. Registries of real estate shall be divided into three classes, according to the amount of fees collected by them. The classification of Registries may be changed every ten years, according to the results of experience during the last five years, and after the formalities prescribed in the following article, necessary for the transfer of their location, have been complied with.

ART. 2. The Government may order the change of the location of Registries, subject to the following rules:

First. That reasons of public convenience exist sufficiently proven in the proceedings which for this purpose are instituted in the Registry and Notarial Division of the Colonial Department.

Second. That in said proceedings a hearing be given to the municipal councils of the towns situated within the jurisdiction of the Registry.

Third. That the Register of property, the Judge of First Instance, the Governmental Division of the proper Audiencia, the Governor of the Province, and the Governor-General report as to the usefulness, advantages, and disadvantages of the transfer.

Fourth. That the Council of State be heard.

ART. 3. When the transfer of the seat of a Registry has been ordered, in accordance with the provisions of the preceding article, the President of the Audiencia shall issue the orders necessary to carry it out immediately, proceeding so that due compliance may be given to the rules mentioned in Articles 6, 7, and 8 of these Regulations, with such modifications as are required by the nature of the case.

ART. 4. The provisional transfer of offices shall be permissible when Registers, by reason of extraordinary circumstances, or when the town is occupied or threatened by enemies, are prevented from effectively discharging their duties, or when in discharging them they would be obliged to recognize as legal, the instruments or documents authorized by the enemies.

With the exception of these cases, Registers shall not be forced to leave the locality where their office is located, and they shall be entitled

to a reward if, continuing to discharge their duties and confining themselves thereto, they secure the preservation and custody of the books and documents of the Registry. This reward shall be considered as a special award, for all the purposes of Rule No. 1 of Article 303 of the law.

ART. 5. Registers who find themselves in the situation referred to in the preceding article shall request the transfer of the office through a communication addressed to the judicial authority previously delegated to inspect the Registry, so that said official may designate the town or locality where it is to be transferred to. Said official shall immediately communicate it to the President of the Audiencia, stating at the same time the safest place in his judgment, so that the President may decide what may be deemed proper. If the urgency of the case requires it, the official may himself fix the place to which the offices are to be transferred, subsequently giving an account thereof to the President.

The offices should not be located outside of the territorial limits of the Registry. If this can not be effected and their transfer is made to a place in a different territory, the authority of the President of the Audiencia shall be indispensable for this purpose.

ART. 6. After the provisional transfer of a Registry has been ordered, it shall be communicated to the Governor-General and to the Governor of the proper province, and shall be published in the official newspapers of the corresponding island, stating the date of its establishment, and the date it was opened to the public, in the locality to which it has been transferred.

These facts shall also be communicated to the Colonial Department.

ART. 7. The transfer shall always be made at the expense and under the responsibility of the Register, who, should he consider it indispensable, may request the assistance of the authorities for the due protection of the books and documents of the Registry.

The following rules shall also be observed:

First. In closing the Registry on the day immediately preceding the date of the transfer, the Register shall make a record of its closure in the proper form, adding the following words before the date:

And this Day Book shall not be reopened until the transfer of this office to ——— has been made, at which place the Registry shall continue temporarily located, according to an order from ———.

Second. After the Register and his office have been established in their new locality, he shall advise the official who makes the inspections to this effect, who shall make an extraordinary inspection as soon as possible, the only purpose of which shall be to make a general inventory of all the books and packages of which the Registry is composed, so as to be able to state at any time the number and condition of the same after their transfer, being permitted, for the sake of brevity, to refer to his last inspection or inventory if the actual condition of the office can be understood therefrom.

Third. After the inspection has been concluded, the Delegate shall fix the day on which the new Registry is to be opened, ordering that it be announced with the greatest publicity and with proper previous notice.

Fourth. If some book or document appears to have been lost, the Delegate shall proceed as is proper according to law, taking into consideration the provisions contained in Title XV of the Law. At any rate, and no matter what the results, the President of the Audiencia shall be advised thereof.

ART. 8. When the President of the Audiencia orders the temporary transfer of a Registry, he shall designate in accordance with the provisions of articles 269 of the law and 309 of these regulations the judicial authority which is to be delegated to inspect said office.

ART. 9. As soon as the extraordinary conditions which caused the temporary transfer have disappeared, the Register shall thus advise the President of the Audiencia, through his Delegate, so that the President may authorize him to return to the town which is the seat of the Registry. Should the President consider that those conditions have disappeared, he shall authorize him to do so, the same rules being observed which are prescribed for the transfer, with the changes necessary in the entries in the Day Book showing the return.

ART. 10. The days following the closing entry mentioned in Article 7 until, in accordance with the order of the Delegate, the Registry is opened to the public in the town to which it was transferred, shall be considered as days on which no work can be done. During these days the fixed period established for the operations of the Registry shall be suspended.

ART. 11. When in changing the territorial limit of a Registry it is necessary to add thereto a new town or rural subdistrict, the Governor-General of the proper Island shall fix the date from which the documents relating to estates located in the annexed town or subdistrict are to be presented to said Registry, being published with the proper previous notice in the official newspapers.

To effect the annexation mentioned the rules prescribed in the following articles shall be observed:

ART. 12. The Register of the subdistrict to which the town belongs, from which the removal took place, shall deliver the books, documents, and other objects pertaining thereto, after they have been closed in the manner which shall be stated, and after an inventory has been made, setting forth—

The number and class of books delivered.

A literal copy of the entry of closure.

The number and character of the other documents and files delivered.

The date of the delivery.

This inventory shall be made in duplicate; both copies shall be signed by the Register and the Judge of First Instance, one copy being kept

in the Registry of the town from which the removal took place, the other one being sent, together with the books and papers in question, to the Register of the subdistrict to which said town is annexed.

ART. 13. Decrees ordering cautionary notices and copies of instruments of cancellation shall be understood as included among the documents referred to in the preceding article. All of them must be transmitted to the Register of the subdistrict to which the town is annexed, if they refer exclusively to estates situated within its municipal district; otherwise they shall remain on file in the original Registry.

The indices referring to the books transferred shall also be turned over, should they not contain any entries referring to other books which are to be retained and which form a portion of the old Registry.

Should said indices contain any data relating to other towns, the Register shall keep them in his office, but he shall make an abstract from the modern indices of city and country property of the data relating to the town from which the removal took place, and shall send it, together with the books, to the Registry to which it is annexed, which, in view thereof, shall make the necessary additions to the indices for *estates* of his Registry.

The latter official shall also make additions to the indices for *persons*, taking necessary data from the new books.

He shall add up the old indices in a similar manner, making use for this purpose of the same books or of the statements or abstracts of old entries which are sent him in their place.

ART. 14. The closing entry of the books relating to the town from which the removal took place shall be made on the date fixed by the President of the Audiencia, and if this can not be completed on said date the necessary hours of the same and of the following days shall be taken, even when they are days on which business should be suspended.

From the date fixed for this purpose no entry shall be made in the books of said town, nor shall any document referring to the same be admitted which is presented for entry referring to said town, but must be presented in the Registry which in the future the town is to form a part of.

Documents which have been presented previously and are awaiting record on said date shall be presented to the Register of the latter subdistrict, so that he may proceed in accordance with the Law and these Regulations.

The Register within whose territory was the town from which the removal took place, shall transmit with the documents above mentioned, a literal and certified copy of all the entries contained in the Day Book relating to documents presented during the thirty working days prior to the closing entry, and which refer to estates situated within said municipal district.

ART. 15. The closing entry shall be made in the presence of the

Judge, Register, and representative of the Department of Public Prosecution, the last two making a certificate on the back of the title-page of each book, showing—

First. The total number of folios contained in the book and its state of preservation.

Second. The number of folios written on, and the number totally blank.

Third. The number of folios containing blanks between entries, or having blots, corrections, erasures, or interlineations thereon, or they shall state that none such were found.

Fourth. The number of estates recorded, and of the entries relating to each one, stating the total number of entries in each volume, by entry being understood, for this purpose only, marginal notes and references made on the pages relating to each estate.

The Judge shall examine the certificate, and should he find it correct, he shall subscribe it with his signature and rubric.

ART. 16. After the closing entry and inventory have been made, the Delegate shall immediately inform the President of the Audiencia thereof, who in his turn shall advise the Colonial Department; he shall also inform the Register of the subdistrict to which the town is annexed, so that the latter, either personally or through his substitute or some Registry official, may send for said books and documents after they have been found to conform with the inventory, giving the proper receipt therefor, which he shall sign at the foot of the duplicate of the same. The delivery shall be effected in the presence of the Delegate before whom said Register, or the person representing him, shall make the proper statement with regard to any differences he may perceive between the books and documents delivered to him and the inventory.

ART. 17. The Register of the district to which the new town is annexed, must collect the books, documents, and files relating to the town annexed in the shortest possible time, always within fifteen days from the date he receives notice of the conclusion of the inventory, which period may be extended for just cause by the President of the proper Audiencia.

If said period has elapsed without this being done, the other Register shall deliver them to the Delegate, who shall transmit them with due precaution to the Delegate of the Registry to which the town is annexed, so that the latter may deliver them to the Register. All this shall be done at the expense and risk of the latter, and without prejudice to the responsibility incurred by his negligence and to the penalty he has subjected himself to, which shall be imposed upon him by the President of the Audiencia.

ART. 18. As soon as the Register gains possession of the books, documents, and files of the town, he shall inform the President of the Audiencia of this fact, also stating the time he requires to complete the indices. If, on account of not having finished the indices or not having

received the books, he can not make definite records within the period mentioned in Article 56 of these Regulations, he shall act in accordance with Article 42, No. 9, of the law.

ART. 19. The general and correlative numbering which the books relating to the town from which the removal took place bore in the old Registry shall be replaced by that corresponding to the new Registry, the first of said books bearing the number immediately following the last one opened in said office, preserving the special correlative numbering of the municipal district.

ART. 20. The titles of the books of the Registry of property relating to the new town shall be corrected by the addition thereto before the heading at the beginning: "Registry of property of ——— (the new one), formerly of ———," and after the last line of the title, "Volume ——— of property of ——— (the new one)."

ART. 21. The administrative remedies against the suspension or denial of an entry by the old Register of documents relating to the town from which the removal took place shall be presented to the Delegate of the new Registry, and any which are pending shall also be sent to the same person.

ART. 22. When the cause which gave rise to the annexation of a town is the abolition of its municipality, to incorporate it into another pertaining to a different Registry, the books of the municipality abolished shall continue to be kept in the same manner as formerly, being considered as a new section of the municipal district into which it is incorporated.

The provisions contained in the preceding paragraph shall also be applicable, in case the annexation is made to a municipality located within the territorial limits of the Registry.

ART. 23. If in the same instrument property located within a territory belonging to different Registries is alienated or encumbered, it shall be recorded in the proper Registry, its record being effective from the date of the presentation of the instrument, in so far as the property referred to therein is concerned. If an estate is located within the territory of two or more Registries, the record shall be made in each one of them, but only including therein that part of the estate which is located within its limits.

ART. 24. All real estate and property rights thereto may be recorded, without exception, whether belonging to private parties, to the State, to the province, to the municipality, or to civil or ecclesiastical corporations.

ART. 25. Exceptions to the record required by Article 2 of the law are:

First. Property which belongs exclusively to the eminent domain of the State, and which is for the use of all, such as the shores of the sea, islands, rivers and their borders, wagon roads, and roads of all kinds, with the exception of railroads; streets, parks, public promenades, and commons of towns, provided they are not lands of common profit to

the inhabitants; walls of cities and parks, ports, and roadsteads, and any other analogous property during the time they are in common and general use, always reserving the servitudes established by law on the shores of the sea and borders of navigable rivers.

Second. Public temples dedicated to the Catholic faith.

ART. 26. If any of the property embraced in the preceding article, or any part thereof, should change ownership, becoming the private property of the State, provinces, towns, or public establishments, it shall be recorded immediately, if it is to continue inalienable, and in accordance with Articles 42 et seq., if they are to be alienated.

ART. 27. In accordance with paragraphs 1, 2, and 3 of Article 2 of the law, not only must instruments be recorded creating, acknowledging, conveying, modifying, or extinguishing ownership or property rights mentioned in said paragraphs, but also any others relating to rights of the same character, such as the acquisition of estates, half of which are to be reserved on account of entail, definite concessions of mines, railroads, public works, water, pasture, and other similar rights, awards in payment of debts in accordance with the proceedings in general assignment or bankruptcy, concessions of crown lands, the right of antichresis, that of reconveying estates sold with a covenant of resale, or, in fact, any legal instrument or contract, which, without having a proper name in law, modifies at once, or in the future, some of the privileges of the ownership of real estate or property rights.

ART. 28. The obligations to transfer to another person the ownership of any real estate or property right, or of creating on either a right of the same character, shall not require record. Neither shall the obligation to execute in the future any of the contracts embraced in the preceding articles require record, unless the personal obligation in either case is secured by a realty.

ART. 29. Final decrees, which must be recorded in accordance with the provisions contained in the fourth paragraph of Article 2 of the law, are not only those which explicitly declare the incapacity of some person to administer his property, or modify in the same manner his civil capacity with regard to the free disposition of his fortune, but also all of those which legally produce some incapacity, although they do not declare it in a positive manner, such as decrees containing a declaration of bankruptcy or general assignment.

ART. 30. The provisions contained in the fifth paragraph of Article 2 of the law, with regard to the entry of leases, shall also be applicable to sublettings, subrogations, transfers, and releases, provided they come within the conditions contained in said paragraph; but in such cases no new record shall be made, but a marginal note opposite the one of the original lease, which had already been made.

ART. 31. Real estate and property rights owned or administered by the State and civil corporations shall at once be entered in the Registries of property of the subdistricts in which they are located.

ART. 32. The Administrative Departments shall order the corporations, offices, or persons depending on them, who enjoy, or who have charge of the realty mentioned in the preceding Article, to demand the proper records, and shall furnish them with such documents and information as may be necessary.

ART. 33. Whenever there exists a written title of the ownership of the State or the Corporation to the property to be recorded, in accordance with Article 31, it shall be presented in the proper Registry, and by virtue thereof a record of ownership in favor of the person who appears to be the owner shall be demanded, which must be granted, if it should be proper, in accordance with the rules established for records of private persons.

ART. 34. Should no written title of the ownership of said property exist, an entry of possession shall be demanded, which shall be made in the name of the State, if the latter should own it absolutely, or in favor of the corporation which actually has possession, or which had possession until the Administration took it into its custody.

ART. 35. In the record of ownership as well as in the entry of possession, the last grantor as well as the actual status of the possession of the recorded property shall be stated.

ART. 36. To make the entry of possession, the chief of the dependency in whose charge is the administration or care of the estates which are to be recorded, provided his office carries with it public authority or the right to certify, shall issue a certificate in duplicate, in which, referring to the inventories or to the official documents which are in his possession, he shall state:

First. The character, location, superficial area, boundaries, denomination, and taxes on the estates or rights that it is desired to record.

Second. The legal character, value, conditions, and charges on the property right in question, and the character, location, bounds, and name of the estate on which said right is charged.

Third. The name of the person or corporation, when it appears, granting the realty or property right.

Fourth. The time the State, province, town, or institution has had possession thereof, if it can be exactly or approximately fixed.

Fifth. The public service or object to which the estate is destined.

If any of these details can not be stated, this shall be mentioned in the certificate, indicating them.

These certificates shall be executed on stamped paper, the draft thereof remaining countersigned in its proper record of proceeding.

ART. 37. When the official in whose charge is the administration of the property, should have no public authority nor the right to certify, the certificate referred to in the preceding article shall be issued by the nearest of his hierarchical superiors who can do so, being furnished for this purpose with the necessary information and official data.

ART. 38. The two copies of the certificate mentioned in Article 36

shall be forwarded immediately by the official issuing it to the proper Register, requesting the proper entry of possession.

ART. 39. Should the Register give notice in the certificate of the omission of some indispensable requirement for the record, according to Article 36, he shall return both copies, giving notice of said omission, after having made the entry of presentation, and without making a cautionary notice. In such case new certificates shall be issued, in which said omission shall be corrected or stating the insufficiency of the data needed to do so.

ART. 40. After the record of ownership has been made, Registers shall return the instrument presented therefor to the offices or officials from whom they were received. When the possession is entered, the Registers shall retain in their possession one of the two copies of the certificate, and they shall return the other one, with the proper note of "Recorded," etc.

ART. 41. Property possessed by the clergy shall be entered in the same manner, as well as that which is returned to them and which is to remain in their possession as inalienable; but the certificates of possession which may be necessary for this purpose shall be issued by the Bishop of the Diocese.

ART. 42. The real estate or property rights owned or administered by the State or civil or ecclesiastical corporations, and which must be conveyed in accordance with the laws in force, shall not be recorded in the Registries of property until their sale or redemption in favor of private parties takes place.

ART. 43. When any of the property is to be sold, or any of the rights mentioned in the preceding article is to be redeemed, the Administrator of the Treasury (Administrador de Hacienda) shall search for and unite to the bill of sale or writ of redemption the title deeds of said property.

Should said title deeds not exist or not be found, this fact shall be stated in the said record of proceedings, and said Administrator shall issue the certificate in duplicate mentioned in Article 36, by virtue of which an entry of possession shall be demanded and made before the day fixed for the public sale, or before the redemption is effected if a property right is in question, and in all cases proceeding in accordance with the provisions of the preceding articles.

ART. 44. When the bill of sale or writ of redemption is executed, the title deeds of ownership, should they exist, or the duplicate of the certificate of possession, which otherwise should have been returned to the Register, according to the provisions of Article 40, shall be delivered to the purchaser or redeemer.

ART. 45. Those who, from the date the mortgage law went into operation, should have acquired from the State any conveyable property or redeemed any annuities (censos), shall have a right to demand the deeds thereto, or, in default thereof, the certificate of possession

mentioned in Article 36, with the Register's note stating that the respective entry has been made.

For this purpose Administrators of the Treasury shall immediately request the record of all property embraced in this case, forwarding the title deeds, should there be any, or the certificates of possession.

ART. 46. The purchasers of conveyable property and the redeemers of annuities (censos), also conveyable, who acquired their right before the Mortgage Law went into operation, may have them recorded in their favor by presenting only the bill of sale or writ of redemption, whether it is of a prior or a subsequent date.

ART. 47. When the State or civil corporations acquire some real estate or property right, the Governors of the provinces or the central Chief under whose dependency they are to be administered or possessed, shall take care that the titles of property be collected, should there be any, and that at any rate the entry which is possible, be made, either of ownership or of mere possession.

ART. 48. The authorities who administratively decree the award to the Treasury of real estate or of property rights in payment of debts, shall procure their record of ownership in favor of the State, seeing for this purpose that a certificate be presented to the Register embracing the decree and the other matters necessary for records, according to Article 9 of the law.

ART. 49. If in the cases stated in the two preceding articles the realty or property right does not appear recorded in favor of the debtor or assignor, and in addition thereto the deed thereof is not in existence or can not be found, the Administration shall issue the certificate mentioned in Article 36, with reference to the proceedings of attachment or award which may have been had, and shall demand of the Register, by virtue thereof, that he issue the certificate which must precede the record or entry in favor of the State.

ART. 50. By title deed shall be understood, for all the purposes of the record, the public instrument, which is *prima facie* evidence *inter vivos* or *causa mortis*, on which the person in whose name said record is to be made bases his right to the realty or property right.

Should said person possess more than one title deed, because, either being an heir or legatee, he bases his right on a testament, and on a partition, or, owning property, his right having been questioned, he is supported in his ownership by a compromise or final decree, or for any other cause, all the deeds shall have to be recorded, including them, if possible, in one entry.

ART. 51. Authentic documents for the purposes of the law shall be those which, serving as title deeds for the ownership or property right, are issued by the Government or by a competent authority or official, and which must be evidence in and of themselves.

For the intents and purposes of the second and following paragraphs of Article 3 of the law, the title, which can be obtained in similar cases with regard to property rights of which the law treats generically, shall

serve for the record of transfers or incumbrances relating to estates the individual value of which does not exceed 300 pesos; and when the question is of one or more heirs who are so *pro indiviso* and a partition is not possible or necessary, in inheritances of less than 2,500 pesos, the notarial instrument obtained in the manner prescribed by the article above quoted may also serve as a title.

ART. 52. Documents executed in foreign countries can only be recorded after they have been officially translated in the Translation Bureau or by any other official who is competently authorized therefor.

Judgments rendered by foreign Courts can not be recorded until the Supreme Court orders their execution, in accordance with the proper provision contained in the Law of Civil Procedure.

TITLE II.

RECORD—ITS METHOD AND ITS EFFECT.

ART. 53. By legal representative of a person interested in a record, for the purpose of demanding it in accordance with the provisions contained in Article 6 of the law, there is understood such person as is to represent him in all legal acts, in accordance to law, such as the father or the mother representing the child still under their authority, the husband representing the wife, the guardian, and the agent, even if the appointment of the latter is verbal or implied.

As agent shall be considered, for the purpose of presenting documents in the Registry and demanding a record, any person to whom the interested party intrusts this commission.

ART. 54. When the person who requests said record does so in the capacity of agent or representative of the person who, in accordance with Article 6 of the law, has a right to demand the former, the name of the principal shall be stated in the entry of presentation, and whether the appointment be verbal or written.

ART. 55. The clerks, officials, and assistants of the Registry of property can not present any document for entry in the Registry as representatives of the interested persons.

ART. 56. Records shall be made by Registers within fifteen days following the date of the presentation of the receipt showing that the fees have been paid; and should none be due on the instrument, it shall be so stated in the record, within the same period, computed from the date of the entry of presentation.

If this period has elapsed without the entry having been made, the interested party may complain to the Delegate and demand an investigation of the Registry proving the delay, and entering claim against the Register for any resulting damages.

The Delegate, in view thereof, shall order the entry made, and if the Register does not prove that some important, unavoidable obstacle existed which prevented it, he shall transmit a report to the Presi-

dent of the Audiencia, so that the proper penalty may be imposed on him.

ART. 57. To insure the record in the case mentioned in Article 7 of the law, the Notary, or the authority or official who issues or certifies to the instrument in which the right of a third person is reserved, shall forward the documents necessary to make said entry, directly to the Register.

The expenses incurred in the transmission of said documents shall be defrayed by the parties to the instrument or contract, containing the reservation of the right of a third person.

When the instrument or contract containing said reservation is certified abroad the Spanish diplomatic or consular agent shall forward the document or documents to the Department of State, who shall turn them over to the Colonial Department for the proper proceedings.

If the instrument or contract referred to in the preceding paragraph is certified in any part of America, to be used in the Registries of Cuba and Puerto Rico, or in any part of Asia or Oceanica, to be recorded in the Philippines, the proper Spanish agent shall transmit the document or documents to the proper Governor-General, who shall forward them to the President of the Audiencia of the territory for the necessary proceedings.

The Register, in view thereof, shall make the entry, if the instrument or contract is not subject to a tax, according to the note made in the instrument, proceeding for the collection of his fees in accordance with the provisions contained in Article 336 of the law. If a tax is to be charged, the Register shall make the entry of presentation, and shall not make the record until payment for the former has been made.

When the instrument or contract refers to property located in the territory of different Registries, the Register shall officially transmit to the proper Registry the document to be recorded, after having made in his own the entry of presentation advising the person interested to this effect. The other Registers shall proceed in a similar manner, the last one returning the document to the first.

The official transmission of the document which Notaries, Officials, or Registers must make, according to the cases mentioned, shall be through the representative of the Department of Public Prosecution, so that the latter may make the proper presentation.

ART. 58. Registers shall be careful under their responsibility in making the entry, or record, as the case may be, of the instruments or contracts referred to in the preceding article, that an express mention be made therein of the property right reserved, and of the persons to whom the reservation is made.

ART. 59. To number the estates recorded in accordance with the provisions contained in Article 8 of the law, the first one of which the ownership is entered in the new Registries shall be designated by Number 1, and with the following numbers in strict order of dates the ones which are successively entered under the same conditions.

Said numeration shall always be made in figures.

ART. 60. When an estate designated with its proper number in the Registry is subdivided, the part separated in favor of the new owner shall be entered with a new number, a brief statement of this fact being made in the margin of the old record with a reference to the new one.

When two estates are joined to make a single one, the latter shall be recorded under a new number, a statement to this effect being made in the margin of each one of the previous records relating to the ownership of the estates which are joined. In the new record reference shall also be made to said entries as well as to the incumbrances previously existing on said joined estates.

ART. 61. The following shall be recorded under one number only, should the interested parties so request, being considered as a single estate in accordance with Article 8 of the law, and for the effects mentioned therein:

First. Rural property known as estates, coffee plantations, sugar plantations, meadows, farms, cattle farms, pastures, etc., which form dependent or joined property, with one or more buildings and one or several pieces of ground, wooded or not wooded, even if the latter are not contiguous to each other, nor to the building, provided they belong to the same series of estates and to one person only, or to several *pro indiviso*, or even when they are subject to the same incumbrances or property rights belonging to one or more persons, and composed of different lots or parts given in emphyteusis. For the purposes of the record, the direct ownership only shall be considered, even when several persons collect rents or annuities of an estate in the capacity of direct owners, provided said estate is not actually divided among them for this purpose.

Second. All town estates and all buildings, even when certain parts, rooms or floors, belong to different persons, whether in absolute or qualified ownership.

Third. Any building or place of shelter situated outside of towns, with all its dependencies and appurtenances, such as yards, covered passages, pigeon houses, etc., even when it belongs to several owners *pro indiviso*, is subject to incumbrances or property rights belonging to one or more persons, and when it is divided into lots or parts given in emphyteusis.

Fourth. Contiguous parcels of land, belonging to one owner or to several *pro indiviso*, even when they have no place of shelter and have not been conveyed in the same manner nor by the same person, and came into the possession of the last grantee through different instruments.

When the property right or incumbrance which affects all of the estates united, referred to in No. 1, should be divided into fractions, and the estates encumbered by each part are determined, the latter may be recorded apart from the others, and under a separate number,

although all those which are affected by part of the incumbrance constitute one group among themselves.

If any of the groups of estates which may be recorded under one number, in accordance with the provisions of this article, should be located within the limits of two or more municipalities, the portion corresponding to each one shall be entered in its special Registry, a statement being made at the end of the record that the estates affected thereby, in conjunction with the others, whose numbers, folios and volumes shall be cited, constitute ——— (the estate, coffee plantation, farm, etc.), with a statement of the name, should it have any, or otherwise the general name by which said group is known.

ART. 62. Records relating to each estate shall be numbered in the order in which they are made.

ART. 63. To indicate exactly the estates or rights which are the subject-matter of the records, Registers shall act in accordance with the provisions contained in Article 9 of the law, subject to the following rules:

First. The character of the estate shall be described, stating whether it is rural or city, and the name by which such estates are known in the province or town.

Second. The location of the rural estates shall be fixed by a statement of the district, subdistrict, or any other name by which the place in which they are located is known, their boundaries according to the four cardinal points, the character of the contiguous estate, and any details which will avoid its being confounded with others.

Third. The location of the city property shall be fixed by stating the town in which it is located, the name of the street or place, the number, should it have any, and if the latter is of a recent date, its former number shall also be stated; the number of the square, block, or quarter, the name of the building, should it be known by any special one, the bounds, and any other details which will serve to distinguish the recorded estate from another.

Fourth. The superficial area shall be stated in the manner in which it appears in the instrument and with the denominations employed therein; but if said measurement does not appear in the instrument, this fact shall be stated in the record.

Fifth. The character of the right recorded shall be indicated by the name given thereto in the instrument, and if none has been given it, none shall be expressed in the record.

Sixth. The value of the estate or right recorded shall be stated, if it appears from the instrument, in the same manner it is stated therein, either in money or in kind, or in any other manner. If said value has been arrived at by appraisement for the payment of the taxes, or if a use or annuity is in question which was capitalized for the payment thereof, the amount taken as a basis for the fees shall be indicated in the record.

Seventh. To indicate the extent of and incumbrances on the right which is to be recorded, a detailed and literal statement shall be made of all which, according to the deed, limits said right and the privileges of the grantee for another's benefit, whether it be a person determined on or an undetermined one, as well as the time when the obligations contracted will fall due, if those recorded are of this character.

Eighth. The liens on the estate or right which is affected by the immediate or mediate entry may appear either from a previous record or only from the instrument presented. In the former case their nature and number shall be briefly stated, indicating what number each one has, and the folio and *liber* of the Registry where they can be found. In the latter case they shall be copied literally, giving notice that they have not been recorded. If said liens appear from the instrument and from the Registry also, but with some difference between the two, said variance shall be noted.

Ninth. The names which must be stated in the record shall be expressed as they appear in the instrument, the Register not being permitted, even with the consent of the parties, to add or to omit any. To the name shall be added the age, status (whether married or single), profession, and domicile. Societies or public establishments shall be designated by the name by which they are known, stating their domicile at the same time, as well as that of the person who requests the record in their name, if it is not a society known by its firm name only.

Tenth. Any record of instruments or contracts for which taxes are due the State shall also indicate the amount thereof and the date and number of the receipt.

Eleventh. At the end of any record or notice the Register shall state the fees which were charged therefor.

ART. 64. In any record relating to estates of which the land belongs to one person and the building or the plantings to another, this fact shall be clearly stated.

ART. 65. Whenever any right previously created in realty, such as an annuity (censo), mortgage, use, and other similar rights are recorded for any reason whatsoever, there shall be stated the date of their creation, the name of the grantor, and the special incumbrances under which they were created, as far as they appear from the instrument, should they relate to a realty.

If these should appear from the original record of the right, subsequent ones shall only contain an indication thereof, with the proper reference to said record. Should no prior record exist, this fact shall be stated.

ART. 66. In records of mortgages the price at which the estate is valued by the contracting parties shall be stated, as well as a renunciation of any new appraisement or action brought for this purpose. The time of the maturity of the obligation shall also be stated with great precision and clearness.

Partial payments made by the debtor on account of the principal or interest of the loan shall be noted on the margins in the manner prescribed by Article 181 of these Regulations, it being permissible to prove them by a notarial instrument.

ART. 67. The assignment of a mortgage right or of any other property right shall be shown by means of a new entry, which shall make reference to the first one, citing its number and folio, names of the assignor and the assignee, and the other details which appear in the assignment, and which are common to all records.

ART. 68. In records of leases the price stipulated and the duration of the contract shall be stated.

ART. 69. Railroad, canal, and other public works of a similar character may be recorded at any time, presenting for this purpose the instrument by which the definite concession of the work was granted, be it a law, Royal Decree, or public instrument, presenting at the same time the other documents fixing or modifying the rights allowed the grantee.

ART. 70. If the record treated of in the preceding article should be made during the execution of the public work, additions or corrections may be made, when said work or any of its sections is completed, by virtue of the instrument setting forth the survey and the plan, or by any other documents by which a change is made therein or in the rights recorded.

ART. 71. The record of the concessions treated of in Article 69 must be made in the Registry of property within the bounds of which is located the beginning of the road or canal, a brief reference being made to this original record in the other Registries whose territory is crossed by the public work, in which, as well as in the corresponding books of the proper municipalities, the length of the ground covered shall be stated, and the conditions of the property rights which may be of private interest in those districts, it being unnecessary in any case to state the bounds of the contiguous estates or the prior record of the land granted for the construction of the road or canal.

ART. 72. The stations, warehouses, dams, bridges, aqueducts, and other works constituting an integral part of said road or canal, necessary for its existence and operation, do not require a distinct and special record, but shall be included in the general record or in the special ones of the public work itself, stating in each Registry the works located in the part of the line comprised within their jurisdiction. But other buildings and constructions, such as orchards, gardens, forests, plantings, and any other rural or city property, and property rights arising out of railroads, canals, and other public works which are the private property of the grantee companies, must be recorded specially and separately in the proper Registry, with the details and conditions required by law and by these Regulations.

ART. 73. The original record of the railroad, canal, or public work

must necessarily state whether the company to whom the concession was granted is or is not authorized to issue mortgage bonds payable to the bearer; and should it be so authorized, the amount of the principal fixed therefor, which determines the scope and limits of the powers of the company in this respect. If this authority is granted after the record has been made in the Registry, it shall be entered by means of a marginal note opposite the same, the Royal Decree authorizing the issue of said obligations serving as a basis therefor.

ART. 74. After the description of an estate has been made in its record of ownership it shall not be repeated in any other records or entries made in the Registry relating thereto, provided the name, location, superficial area, bounds, and other important details are stated in the same manner in the instrument presented for this purpose; but the number of the estate, of the record, and of the folio and *liber* of the Registry in which said description may be found shall be cited, adding any other details to complete it, and which appear from the instrument presented.

When all the details are not indicated in the same manner, a statement shall be made of only the ones at variance and a simple reference made to the other ones.

ART. 75. Records of any kind shall be made in the following order:

First. Description of the estate the subject of record, or a reference thereto if proper, according to the preceding article.

Second. A statement of the encumbrances, should there be any.

Third. Name and title of the person transferring the right or the name of the corporation or legal person who is the last grantor thereof.

Fourth. A statement of the property right which it is desired to record, and of the interest on which it is based, if the estate itself is not alienated by the record.

Fifth. The name of the right transferred, and that of the person, entity, corporation, or organization to whom it is transferred.

Sixth. An exact copy of the conditions imposed upon the grantee or upon his successors which restrict the privileges of ownership in any manner whatsoever.

Seventh. A statement of the instrument presented to the Registry, indicating the Court or the name and surname of the notary or official who certified it, the place and date of its making and execution.

Eighth. The day and hour of its presentation to the Registry, citing the number and folio of the entry of presentation.

Ninth. The amount paid for Royal taxes and the number of the receipt, which shall remain in the possession of the Register, or a statement that the instrument or contract is not subject to said tax.

Tenth. The conformity of the record with the documents to which it refers, and a statement of the package in which those which must be filed may be found.

Eleventh. Date of the record and signature of the Register.

Twelfth. Fees of the Register.

ART. 76. For the purposes of the fourth paragraph of Article 2 of the law and Article 29 of these Regulations, the record of final judgments declaring incapacity shall be made in accordance with the rules of Article 9 of the law and 63 of these Regulations, applicable thereto, and shall also contain the following details:

First. Name, surname, and residence of the complainant.

Second. Purpose of the complaint.

Third. The clause of the decision disposing of the question, indicating the Court which issued it, its date, and its final disposition.

Fourth. Proof of the publication of the incapacity and designation of the person who has been appointed to administer the affairs, if said person should be named in the decree.

ART. 77. Registers shall consider, in accordance with the provisions contained in Article 18 of the law, as legal errors in the documents or instruments which it is desired to record, all those affecting the form of the instruments, as well as the effectiveness of the obligations or rights contained in the same, provided they appear from the text of said documents or instruments or may be observed by a simple inspection thereof.

Those which do not state, or state without sufficient clearness, any of the details which according to the law the record must contain, under pain of nullity, shall be considered as comprised in Article 18 of the law.

ART. 78. The determination made by Registers, or, in a proper case, by the President of the Audiencia, of the legality of the instruments presented, of the capacity of the person executing them, or of the competency of the Judges or Courts ordering the cancellations, according to the provisions contained in Articles 18, 100, and 101 of the law, shall be limited for the purpose of refusing, suspending, or admitting the record, and shall not prevent nor prejudice the suit which may be instituted before the Courts with regard to the nullity of said instrument, or the competency of said Judge or Court, unless a judgment in cassation is rendered.

If the judgment rendered in said suit shows that the instrument was incorrectly classified, or the capacity of the parties thereto or the competency of the Judge or Court, the Register shall make the record or shall cancel the one that has been made, as may be proper, the new record bearing the date of the entry of presentation of the instrument which gave rise to these interlocutory proceedings.

ART. 79. Registers shall not only refuse to record any instrument which contains errors preventing it, making a cautionary notice thereof or not, as may be proper, but also, if it appears from said instrument that some crime has been committed, they shall give notice thereof to the proper judicial authority, forwarding the document containing it.

ART. 80. Registers can not themselves determine the legality of documents of any kind presented to them if they or their respective

wives or relatives within the fourth degree of consanguinity or the second of affinity have any interest in said documents. For this purpose the notaries certifying them shall be considered as interested.

The legality of the documents referred to shall be determined under their responsibility by the representative of the Department of Public Prosecution, or, in his absence, by a lawyer of the subdistrict, who must be an adult, to either of whom, as may be proper, they shall be transmitted by the Register, the former receiving the proper fees according to the Schedule.

ART. 81. If the Register should not make the record demanded on account of an error in the instrument, and the interested party requests that a cautionary notice thereof be made instead, in accordance with No. 8, Article 42 of the law, a marginal note shall be made in the following terms:

The record (or cancellation) referred to in the adjoining entry is suspended, because the instrument (or judicial mandate) presented (here the errors which have been noted). And as this error may be corrected, I make a cautionary notice thereof in volume ——— of the municipality of ———, folio ———, estate No. ———. (Date and surname.)

If the error is one that can be corrected and the thirty days referred to in Articles 17 and 19 of the law have elapsed without the cautionary notice having been requested or the error corrected, a note at the margin of the entry of presentation shall be made in the following terms:

The adjoining entry, No. ———, is cancelled, the document presented having contained the error ———, or the errors ———, and thirty working days having elapsed without having been corrected or a cautionary notice thereof having been requested. (Date and surname.)

ART. 82. In compliance with the provisions contained in the last paragraph of Article 66 of the law, and in the third paragraph of Article 246 of the same, if the interested person appeals from the determination of the Register, or if some consultation has been made regarding the taxes, if the thirty working days have not elapsed from the date of the presentation, a note shall be made at the margin of the entry of the latter in the following terms:

The adjoining record remains in force until the objection entered or the consultation made has been decided. (Date and surname.)

If the determination made by the Register is definitely confirmed, the decision shall be communicated to him officially; and if within the fifteen working days following the date on which the person interested was notified of the decision the errors are not corrected, the Register shall officially cancel it.

Should the error be corrected, or should it be decided that the record should have been made, the Register shall do so if the instrument has not been entered in the Registry, and if it has been noted, he shall convert said entry into a record.

ART. 83. If the defect in the instrument is such that the Register does not believe he should make a cautionary notice thereof in accordance with Article 65 of the law, he shall make a marginal note in the following terms:

The record (cautionary notice or cancellation) to which the adjoining record refers, is not admitted because the instrument presented (here the defects noted). And as said error does not appear to be capable of correction, a cautionary notice can not be made either. (Date and surname).

ART. 84. The assignee of any recorded right must enter the assignment in his favor, provided it has been effected by any recordable document. If the assignment has been made before the right is recorded in favor of the assignor, the assignee may demand the record in favor of the principal at the same time he requests his own.

Instruments of agreement and sale of crown lands shall be recorded in the names of the assignees, without requiring a prior record in favor of the State. The record of these instruments shall be obligatory, and they must be presented for this purpose within the period of one year, computed from the date of their execution.

ART. 85. Heirs and legatees can not record realty or property rights in their favor which have not been recorded by the decedents. The property or rights which come under this head shall be recorded in the name of the deceased person before being entered in the name of the person to whom they were awarded. This record shall be made at the expense of the estate and at the request of any of the interested parties or of the representative of the Department of Public Prosecution, if the heirship is vacant.

A prior record in favor of the principal shall not be necessary with regard to real estate and property rights that he may have acquired before the date on which the mortgage law went into operation, provided this is made to appear by the means indicated in Article 20 of the law.

ART. 86. Whenever a record or cautionary notice of real estate, which, on account of the death of a person, must pass to his heir or legatee, is requested without a judicial decree having been issued, the instrument proving the date of said death shall be presented and filed in the Registry.

ART. 87. Authenticated documents shall be considered for all the purposes of the second paragraph of Article 21 of the law, lease contracts of the last ten years, in which mention is made of the general title; judicial proceedings of possession, survey, or demarcation; decrees of summary action for possession, or any other documents which certify to and which expressly mention the property and their origin in terms sufficiently explicit in the judgment of the Register, the proper administrative appeal from his decision always being reserved.

ART. 88. Judges or Courts before whom an action is brought concerning the nullity of an entry or record shall inform the proper Register of this suit.

The Register, on the same day he receives the notice from the Judge or Court, shall make a marginal note against the entry or record in the following terms:

Suit against the nullity brought by N——— before the Inferior Court or Court of ———, Office of ———. (Date and surname.)

ART. 89. If the exception to the nullity is refused, the Court or Judge shall also communicate to the Register the decree in which it is refused, so that he may cancel the marginal note which has been made, by another contiguous one, stating:

The appeal of nullity indicated in the preceding note has been refused by a decree of such date. (Date and surname.)

ART. 90. After the nullity of an entry or of a record has been declared, the Judge or Court shall order it canceled and a new one made in the manner prescribed by the law.

This new record shall be effective from the date it properly should be, according to the respective cases.

TITLE III.

CAUTIONARY NOTICES.

ART. 91. The person who brings the action for ownership, referred to in case No. 1 of Article 42 of the law, may at the same time or subsequently request that a cautionary notice thereof be made, offering to indemnify any damages which may be caused the defendant thereby, should he win the suit.

The Judge or Court shall order the notice made, if it is proper, at the time of beginning the action and within the period of three days if said action is subsequently begun.

ART. 92. Cautionary notices shall be made by an attachment of realty or property rights, ordered by a civil or criminal judgment, even when the former is only cautionary, the following rules being observed:

First. If the ownership of the estates attached appears recorded in the old or new books in favor of a person other than the one against whom the attachment was ordered, entry of the notice shall be refused, the provisions prescribed by the law and regulations for records refused on account of errors which can not be corrected being observed. The Registers in such case shall keep one of the copies of the judgment and shall return the other, with a memorandum of the refusal, clearly stating the reason therefor.

Second. If the ownership of the property attached is not recorded, the notice of the attachment shall be suspended, and in its place a cautionary notice shall be made of the suspension of the same, if said error is capable of correction.

Third. The persons interested in attachments may demand that the person who is considered the owner, or his representative in the proceedings, be required to correct the defect by having the omitted record

made; and should he refuse to do so, they may request that the Judge or Court order it, if they have or can present the instrument requisite for this purpose.

Fourth. When, by virtue of a final decree, the sale of the attached property is ordered, the interested persons may also, if the owner refuses to have the record made, supply the lack of titles by the means established by Title XIV of the law.

Fifth. The interested persons may request in the same manner, in a proper case, that the attached property be sold at auction on the condition that the buyer make the record which was omitted, before the execution of the bill of sale, within a sufficient period to be fixed by the Judge or Court, taking all steps for this purpose that the person interested could have taken, in accordance with the provisions above mentioned. The expenses and costs caused by the refusal of the owner to make the record shall be defrayed by him.

ART. 93. Authorities who order the attachment of realty in administrative proceedings shall have cautionary notices thereof entered. For this purpose they shall order a certificate in duplicate to be presented to the proper Register, comprising the writ of attachment and other matters necessary for such entries, according to Article 72 of the law.

ART. 94. When the purchaser of an estate or right belonging to the State is declared a bankrupt, not having paid the price therefor within the proper time, a cautionary notice of this declaration shall be made, proceeding for this purpose in the manner prescribed in the preceding article.

ART. 95. The cautionary notice treated of in case number 3 of Article 42 of the law can not be made until, in the execution of the judgment, realty of the person against whom judgment is rendered is ordered attached, in the manner prescribed for summary actions for possession.

ART. 96. The cautionary notice treated of in case number 4 of Article 42 of the law shall also be proper when some debtor is declared insolvent or bankrupt, in accordance with the proceedings prescribed by the Law of Procedure.

ART. 97. Any cautionary notices which can not be made except in accordance with a judicial decree, shall be made by virtue of the presentation in the Registry of the mandate of the Judge or Court, in which shall be comprised literally the special order in which it was decreed, its date, and the document or documents upon which said notice is based.

The mandate shall always be issued by the Judge or Court within whose territorial limits the Registry in which the cautionary entry is to be made is located, to whom other Judges or Courts shall transmit letters requisitorial to issue the mandates, when the Registry is not located within their own jurisdiction.

ART. 98. Cautionary notices may be demanded by the persons interested therein, in accordance with the law and these regulations.

ART. 99. Cautionary notices shall be proper—

First. When they are directly and specifically demanded or ordered; provided, that for this purpose a title deed, document, or mandate is presented to the Registry which can produce it, in accordance with Articles 19 and 42 of the law and other provisions of the same.

Second. When some record or marginal note is requested, which can not be made on account of some error susceptible of correction, or any other impediment insufficient to cause its refusal, if the interested persons request that said cautionary notice be made while the error is being corrected.

When a cautionary notice is ordered by a judicial mandate, which can not be made for good reasons, compliance therewith shall be suspended and a cautionary notice of the suspension shall be made.

All cautionary notices shall include the details stated in the following article.

The provisions of number 2 of this article, relating to marginal notes, shall be construed as being applicable exclusively to those which are not a necessary consequence of some record.

ART. 100. To make a cautionary notice of legacies by virtue of an agreement between the parties, according to the provisions contained in Article 56 of the law, a certified copy of the beginning, the ending, and proper clause of the will shall be presented to the Register, with a petition addressed to him, signed by the legatee and by the heir, requesting that said notice be entered, and fixing by common consent the property against which it is to be made.

When the notice is to be entered by virtue of a judicial mandate, the certified copy mentioned in the preceding paragraph shall be presented to the Registry, together with the mandate issued by the Judge or Court, in accordance with the provisions of Article 57 of the law.

ART. 101. When the heir and the legatee request, by common consent, that a cautionary notice be made of some legacy, they shall state in their petition the name, status (whether married or single), age, residence, and date of the death of the principal, as well as the fact of no testamentary proceedings having taken place, and that the inheritance has been accepted by the heir.

If, in the latter case, the estate to be entered is not recorded in favor of the testator, a request must be made for its record, the title being presented to the Registry, should there be any, from which all the other details, which must be embraced in the notice, shall be taken.

Should there be no title, the ownership or possession shall be recorded by the means authorized by the law.

ART. 102. To serve the notice mentioned in Article 49 of the law on the legatees, in due form, the heir shall appear with his petition before the Judge or Court of competent jurisdiction, presenting a copy of the

will and an inventory of the realty. The Judge or Court shall then order the notice served immediately, and after it has been served he shall order that the original papers be turned over to the interested person for such purposes as he may deem proper.

ART. 103. After thirty days have elapsed from the date of the notice, without the legatees having exercised their rights, the heir may request a record of the entire estate inherited, presenting to the Registry, besides his title, the original papers mentioned. If the legatees request that the notice be entered, the heir may also record the property which is entered, and which has not been specially bequeathed, but subject to the lien of said entry.

A record in this case, as well as in the case of all the legatees renouncing their right of entry, must refer either to the instrument containing the renunciation made by the legatees or to the notice, proceedings, and their result.

ART. 104. According to the provisions contained in Article 59 of the law, a cautionary notice in favor of agricultural creditors may be demanded by virtue of a written private contract. For this purpose the following shall be necessary:

First. That said contracts clearly state all details necessary to avoid doubts and questions regarding their fulfillment, the entry of those which are not compiled with the necessary clearness being refused.

Second. That all the persons interested in the entry appear in person at the office of the Registry, the Register assuring himself of their identity and of the authenticity of the signatures at the foot of said contract.

Third. That if the estate which is to be the subject of the agricultural loan is not recorded in the Registry as the property of the debtor, it be recorded with the necessary formalities, the entry being otherwise refused.

ART. 105. If the estate which is the subject of the agricultural loan is not recorded in the name of the debtor, and it appears from the instrument presented that it is subject to a property obligation, the Register shall make the record, but shall suspend the entry of the notice until the proceedings prescribed in Article 61 of the law have been instituted, or the proper agreement has been presented.

ART. 106. To institute the proceedings treated of in Article 61 of the law, the debtor shall address a petition to the Judge of First Instance of the subdistrict in which the estate is located, stating the works which the latter requires, the approximate cost thereof, and the actual value of said estate; and requesting that the persons who may have some property right in the realty be cited, so that they agree thereto, or state what may be advisable for the protection of their rights. This petition shall be accompanied by a certificate of the appraisement made by experts, and by the documents wherein appear the names and rights of the persons to be cited.

The Judge shall order the citation made with the formalities prescribed in Articles 270, 271, 274, and 525 of the law of Civil Procedure for Cuba and Puerto Rico, and Articles 254, 255, 258, and 509 of that for the Philippines.

If any of said persons is unidentified or is absent, his place of residence being unknown, the representative of the Department of Public Prosecution must be cited.

ART. 107. The persons cited in accordance with the foregoing article may agree to the demands of the owner, in which case the Judge shall issue a decree authorizing the entry, or they may oppose them as to the value at which the estate has been appraised, as well as the works which it is desired to execute, if, as a result, their rights are not sufficiently protected.

ART. 108. The persons opposing the appraisement or the works shall appoint an expert, who, together with the one appointed by the owner, shall correct the appraisement or make a report on said works.

For the appointment of this expert, and to overcome the disagreements which may occur, the rules established by Article 613 et seq. of the law of Civil Procedure for Cuba and Puerto Rico, and Articles 597 et seq. of that for the Philippines, shall be observed.

ART. 109. After the report of the experts, if the opposition referred to the appraisement, the Judge shall issue a decree authorizing the entry and declaring the value of the estates which are the subject of the agricultural loan. If the opposition referred to the works, the Judge shall order the interested persons and the experts to appear before him in an oral trial, for the purpose of securing an agreement between the former. If no agreement can be reached, the Judge shall close the proceedings and issue the proper decree, according to the proofs, either prohibiting the agricultural loan, or authorizing it if it appears from the report of the experts that, after the works have been made, the rights of the persons opposing them shall be no less protected than they actually are, because of the lowering of the income of the estate or its selling price.

ART. 110. To distinguish defects capable of correction from those which are not, and to enter or not a cautionary notice by virtue thereof, according to the provisions contained in Articles 65 and 66 of the law, the Register shall consider the validity of the obligation entered into by the instrument. If this should be null because of its character, conditions, the capacity of the parties thereto, or other similar reason, independent of its extrinsic form, the defect shall be considered as not capable of correction. If the obligation is a valid one, taking into consideration the circumstances mentioned, and the defect is only in the external form of the document containing it, which can be amended or re-executed at the will of the persons interested in the record, the defect shall be considered capable of correction.

ART. 111. In the cases of Article 19 of the law the interested persons may reclaim the document and correct the defect within the thirty days during which the effects of the entry of presentation continue, and request the entry of a cautionary notice, which shall continue in force during the time fixed by Article 96 of the law, or bring administrative proceedings against the Register. When the Treasury is interested it shall be represented by the Public Prosecutor in the absence of the State Attorneys.

ART. 112. The administrative remedy referred to in the preceding article shall lie in all cases in which the Register suspends or refuses a record or entry, for any reason whatsoever. The interested persons shall apply to the Judge of First Instance of the subdistrict, who shall render a decision after hearing the Register. From this decision an appeal may be taken to the President of the Audiencia within the period of eight days, computed from the date of the notice, and, as a last resort and within the same period, to the Registry and Notarial Division of the Colonial Department.

ART. 113. If the object of the proceedings should be to demand the record, they may only be instituted by the persons interested therein or by their legitimate representatives, and in no case by the Notaries who certified to the respective instruments, by virtue of this simple and exclusive act.

When the interested persons appeal, because the record was suspended on account of defects in the manner of executing or drawing the document subject to record, the Notary who certified to it shall be given a hearing, in addition to the Register.

ART. 114. Without prejudice to the interested persons requesting the record, should they desire to do so, the Notaries, in case of the suspension or refusal of a record on account of defects in the instrument, may, subject to the established procedure, institute the proper administrative proceedings, which must be limited to a request for a declaration that the document is executed in accordance with legal formalities and prescriptions. A definite declaration that the document is correctly executed shall be equivalent to ordering its record, in view of which the interested person, without any further proceedings, shall obtain the entry in a proper case.

ART. 115. Registers, Notaries, and interested persons may appeal to the Division from the decisions rendered in administrative appeals by the President of the proper Audiencia.

The period in which all appeals must be taken shall be eight days, computed from the date of the notice of said decisions.

ART. 116. Independently of the administrative remedy mentioned in the preceding article, the interested parties may institute proceedings before the Courts to investigate and contend among themselves the validity and consequent record of the instruments, as well as to the nullity or validity of the obligation therein contained.

The Register, against whom no judicial action can be brought, shall not take part in the suit instituted for this purpose by the interested parties, in accordance with the provisions of the law, except when a formal action is brought against him personally, to exact the civil or criminal responsibility to which his actions may have given rise.

ART. 117. Administrative remedies instituted by the interested persons against the determination of the instrument made by Registers, or against the refusal of the latter to record or enter any document in the Registry, shall be officially instituted and no fees charged therefor. In the same manner any administrative proceedings brought by Notaries, the object of which is to procure a declaration that the document which has not been recorded on account of defects therein, has been executed in accordance with legal prescriptions and formalities, shall also be proceeded with officially and without charges, no matter what the decision in the case may be.

ART. 118. When Registers, in accordance with the provisions contained in the last paragraph of Article 19 of the law, suspend or refuse a record, notice, or cancellation of documents issued by a judicial authority, on account of defects therein, or on account of some legal obstacle which appears in the Registry, they shall return said documents to the Court or Judge who authorized them, with the proper communication, in which they shall state the legal provisions on which their suspension or refusal of the record is based.

ART. 119. The communication of the Register, with the document accompanying it, shall be annexed to the decrees which gave rise thereto. If the defect is capable of correction, and the Judge or Court consider the opposition of the Register well founded, they shall issue the orders necessary to remove the obstacle preventing the proper definite record from being made. Should they not consider it well founded, or that the defect is incapable of correction, they shall refer them to the parties within three days, and if minors, incapacitated persons, or the State are interested in the record requested, or when the object thereof is to secure the expenses in a criminal trial, they shall also refer them within the same period to the Department of Public Prosecution.

ART. 120. The administrative remedy against the suspension or refusal of Registers to record or enter in the Registry a document issued by a judicial authority, must be brought before the President of the Audiencia within whose jurisdiction the Registry is located. The Department of Public Prosecution must necessarily, in the cases mentioned in the preceding article, institute the proper administrative remedy, which shall be brought by the prosecuting attorney of the Court or Tribunal which may have issued the document, with the proper petition, to the President of the Audiencia, sent through the Prosecuting Attorney of said Audiencia.

ART. 121. The President, after hearing the Judge or Court which issued the document, and also hearing the Register, shall issue the

proper decree, which, besides being communicated to these officials, shall be forwarded to the plaintiff.

ART. 122. From the decision of the President the Judges, Courts, Registers, or plaintiffs may appeal to the Registry and Notarial Division of the Colonial Department, within the period fixed for other administrative appeals.

ART. 123. Registers must complain to the President of the proper Audiencia with regard to any compulsion on the part of Judges or Courts, who, in taking cognizance of any civil or criminal question, force them to record or enter in the Registry any document, or to make any entry in the books which said officials consider improper. The President, in view of the complaint of the Register, shall request a report of the Judge or Court who gave ground for it. After the report has been concluded he shall hear the Prosecuting Attorney and shall render the proper decision, observing the other proceedings mentioned in the two preceding articles.

The Judge or Court of whom the President has requested a report, shall stay all proceedings against the Register until the final decision of the appeal, which he shall order complied with and executed.

ART. 124. Administrative proceedings brought by the Department of Public Prosecution concerning the determination as to the legality of a document made by Registers and complaints mentioned in the preceding article shall be officially instituted and without any fees being collected.

ART. 125. Final decisions rendered by the Registry and Notarial Division of the Colonial Department shall be published in the "Gaceta de Madrid," and in that of the proper island.

ART. 126. Cautionary notices shall contain, according to the cases, the following details:

First. A description of the estate which is the subject of the entry in the Registry, or encumbered by the right which is to be recorded, in the manner prescribed for records, to be taken either from the document presented for the entry, or from any previous record of the estate or right; but stating in the latter case the bounds, location, number, area, or other special and important circumstances of the realty, if they are not contained in the document.

Second. A statement of the liens on the estate, which, if they are recorded, shall be shown by a mere reference to the number, folio, and book containing them, and should they not be recorded, those which appear in the instrument presented shall be mentioned.

Third. The name and surname of the owner of the estate or right of which the entry treats, his status (whether married or single), age, place of residence and profession, as well as his title, should they appear.

Fourth. If an entry is requested after the owner of an estate or right of which it treats has died, and before it has been recorded in the name of his successor to said estate or right, the date of the death shall be stated, and also that of the will, should there be any, the name of the

Notary before whom it was executed, and that of the heir, or otherwise, a statement that judicial proceedings have been instituted for the declaration of heirship; and should the declaration have been made, the names, surnames, and residence of the heirs, and date of the decree by which they were so declared.

Fifth. If an entry of a suit for ownership is demanded, the date of the order permitting the action shall be stated, the object of the same, and the names of the plaintiff and defendant.

Sixth. If it should be made by virtue of a writ of attachment or of sequestration, or in fulfillment of some decree, it shall so be stated, the value of what it is desired to secure being mentioned, and the names of the persons in whose favor the decree was issued, and of the person against whom it was rendered.

Seventh. If it should be made by virtue of a decree declaring a person in bankruptcy or insolvent, or temporarily prohibiting the alienation of certain property, the basis and object of said decree shall be stated, and the name of the person who obtained it.

Eighth. If it should be made by virtue of a request to declare the civil incapacity of some person, the classification given to said person shall be stated, the kind of incapacity, a declaration of which is requested, the date of the writ of admission of the claim, and the name of the plaintiff.

Ninth. Should the entry be one of a legacy, its class shall be determined, as well as its value and conditions, and that the inheritance has been accepted by the heir without recourse to testamentary proceedings, that no partition of property has taken place, whether the one hundred and eighty days allowed by law to make the presentation of the request for the entry have elapsed or not, and whether the entry is made either by virtue of a judicial decree or by mutual understanding between the legatee and the heir.

Tenth. If the entry refers to some agricultural credit, the kind of works which it is intended to construct shall be briefly stated, the contract made for this purpose and its conditions, a statement that the estate has no incumbrances, or, should it have any, the value at which the estate has been appraised in its actual condition, with a citation of the persons interested in said liens, and if this was done by a public instrument and on what date, or by virtue of judicial proceedings, with a statement of the judgment rendered in the same.

Eleventh. A statement of the creation of the cautionary notice in the name of the person who has obtained it.

Twelfth. A statement of the document by virtue of which the entry was made, its date, and, if it is a judicial mandate, the name and place of residence of the Judge or Court which issued it, that of the Secretary or Clerk certifying it, and the number under which one of the duplicates of the mandate has been filed in the Registry.

Thirteenth. If the instrument is private, the Register shall also state that the parties appeared before him personally or through an attorney,

certifying that he knows them, and that the signatures at the foot of the petition presented to him are authentic; and should the Register not be acquainted with the interested parties or their attorneys, the petition requesting the entry shall be signed, together with said persons, by two witnesses, who shall take part in the proceedings and certify as to the correctness of the signatures of the parties.

Fourteenth. A statement of the date, book, folio, and number of the entry of presentation of the document in the Registry.

Fifteenth. That the entry conforms with the documents to which it refers; date, signature, and fees.

ART. 127. If a marginal note has been requested which is not a necessary consequence of a record or entry, and it can not be made on account of some defect in the instrument, a cautionary marginal note shall be made, if it should be requested, stating what it is desired to prove by the document presented, and the reason for the suspension, in the following manner:

The ——— pesos deferred payment of the price for which A bought of B the house of this number, as appears from the adjoining record, appear to have been paid according to a receipt signed by A in favor of B on the —— day of ———, before Notary C ———, the original copy of which has been presented in this Registry on the —— day of ———, at —— o'clock, in accordance with entry of presentation number ——, folio ——, of liber ——, of the Day Book.

But as said copy has the defect of ——— I suspend the entry of the record of payment and return the instrument so that the parties may correct the error, if they can do so, within the legal period, making this cautionary note in the meantime at the verbal request of A. (Date, surname, and fees.)

ART. 128. If a record of cancellation is requested, and it can not be made on account of some defect capable of correction, a record analogous to that of the cancellation requested shall be made, stating what record appears to be canceled; the names of the persons in whose favor the record is made, and of the persons interested in having the cancellation thereof made; the manner in which the right may have been extinguished, the date of the document, the official who certified to it, its presentation, the defect which it contains, the period within which to correct it; that the entry is made at the verbal request of the interested person; date, signature, and fees.

ART. 129. All cautionary notices made on account of the suspension of the requested records shall be made in the same manner as the said records, with the following changes only:

First. Instead of a record, it shall be stated that it is a cautionary notice.

Second. After stating the conformity of the entry with the documents to which it refers, there shall be added:

Having noticed the defect of ——— or the defects (stating all defects which may be noted), I suspend the record requested and I return the instrument so that within the period of ——— the parties may correct the defects mentioned, should they be able to do so, making this cautionary notice in the meantime at the verbal request of the person interested. (Date, signature, and fees.)

ART. 130. When a cautionary notice is ordered to be made by a mandate, and it can not be effected for some good reason, it shall be made in the same manner as the decreed notice would have been, with the only difference that, instead of making the entry, a statement shall be entered to the effect that the entry of the notice has been ordered. After the conformity has been stated, mention shall be made of the defect found, that the notice ordered is suspended, and that an entry of suspension is made.

To permit the entries of suspension to be made, the verbal request of any interested person shall not be necessary when the question is of attachments for criminal causes, or when the State is interested therein.

TITLE IV.

CANCELLATION OF THE RECORD AND ENTRY OF CAUTIONARY NOTICES.

ART. 131. Realty which is the subject of a record shall be considered as extinguished for the intents and purposes of No. 1 of Article 79 of the law, if it disappears completely on account of natural accident, ordinary or extraordinary, such as the force of rivers, change of their beds, ruin of the buildings erected on ground belonging to another person, or other similar events.

ART. 132. A recorded property right shall be considered as extinguished for the intents and purposes of No. 2 of said Article 79:

First. When the recorded property right in realty no longer exists, either on account of the renunciation of the person in whose favor it stands, or by mutual agreement between the interested persons, as would happen if the owner of a dominant estate renounce his servitude, or a creditor his mortgage, or if a grantee of an annuity (censo) should agree with the grantor of an annuity (censo) to free one estate from the annuity (censo) to place it on another.

Second. Also when some recorded property right ceases to exist either by operation of law, as in the case of a legal mortgage when the reason therefor ceases, or by the natural operation of a contract which gave rise to the record, as in the case of a mortgage when the mortgagor pays his debt, in annuities (censos) when the person paying them redeems the same, in leases when their term has expired, and in other analogous cases.

Third. When the judicial sale of an estate has taken place, and the first mortgagee having been paid from the proceeds, no balance remains to be applied to the payment of subsequently recorded creditors, in accordance with the provisions contained in Article 125 of the law.

ART. 133. Cancellations which are made because some instruments have been declared null, shall be effective without prejudice to the provisions contained in Article 34 of the law.

ART. 134. The realty which is the object of the record shall be understood as reduced for the intents and purposes of No. 1 of Article 80 of the law, whenever its extension or proportions are actually diminished, either naturally, such as by the accidents mentioned in Article 131, or by the will of the owner, as when the latter divides his estate, alienating a part thereof.

ART. 135. The recorded right of the owner of the encumbered estate shall be considered diminished for the intents and purposes of No. 2 of said Article 80:

First. When the amount of said right is diminished by the renunciation of the interested person, or by agreement between the parties, as when the mortgagee consents to reduce his mortgage to a part of the mortgaged realty, or if the beneficiary renounces a part of the estate subject to a use, or if the grantee of the annuity (censo) limits the annuity (censo) to a part of the estate encumbered thereby.

Second. When the amount of the right recorded is diminished by the natural operation of the contract which is the subject of the record, as happens when the mortgagor pays a part of his debt, making it appear in due form, or when the person paying the annuity (censo) redeems a part of the principal thereof, or when, in a use for life created for two or more lives, one of the beneficiaries dies.

Third. When the amount of the right is diminished by virtue of a judicial decree, as happens whenever a specific part of the instrument, by virtue of which the record was made, is nullified.

ART. 136. The same instrument by virtue of which the record of an obligation was made shall be a sufficient document to cancel it, if it appears therefrom, or from any other document which is prima facie evidence, that said obligation has ceased to exist or has been extinguished.

A new instrument for a cancellation shall only be necessary, in accordance with the first paragraph of Article 82 of the law, when, the obligation having been extinguished by the will of the interested persons, this circumstance must be proved to permit of the cancellation of the record.

ART. 137. By virtue of the provisions contained in the second paragraph of Article 82 of the law, cancellation of records, the existence of which are not subject to the will of the persons interested therein, shall be made in accordance with the following rules:

First. The record of a mortgage on a right of use shall be canceled at the instance of the owner of the real estate, by the simple presentation of the document, which is prima facie evidence of the termination of said use by an act against the will of the beneficiary.

Second. When, by virtue of the preference mentioned in No. 4 of Article 107 of the law, in favor of the first mortgage creditor, the encumbered estate or right is judicially alienated, the records of debts in favor of second or subsequent creditors shall be canceled at the instance of the person who becomes the owner of the encumbered

realty or right, by the simple presentation of a mandate ordering the cancellation, which should contain a statement that the selling price was not sufficient to cover the debt of the first, or that the balance, should there have been any, was used for the benefit of subsequent creditors.

Third. Records of mortgages created on works, the operation of which is granted by the Government, and to which reference is made in number 6 of Article 107 above mentioned, shall be canceled, if the right of the owner of the concession is declared extinguished, by virtue of the same instrument from which the fact appears, and of the document which shows that the amount of the indemnity which the owner of the concession is to receive, in a proper case, to apply to the payment of recorded mortgages, is stated in due form.

Fourth. The record of submortgages treated of in number 8 of Article 107 of the law, created without the formalities established by Article 152 of said law for the assignment of mortgage credits, and those of this class embraced in Article 154, may be canceled by virtue of the instrument fixing the right of the submortgagor or assignor.

Fifth. Records of mortgages created on property in litigation, mentioned in number 10 of said Article 107, may be canceled with regard to the whole or a part of the estate or right by the mere presentation of the decree issued, if the mortgagor has lost the suit.

Sixth. Records of sales of property subject to conditions subsequent, or involving rescission, and records of the creation of property rights to the same property, may be canceled if the reason for the rescission or nullity is recorded, by the presentation of the document proving that the former has been rescinded or annulled and that the value of the property or the amount of the installments which must be returned with any proper deductions have been deposited in the Public Depository (Caja de Depósitos) or in any other similar public institution established for this purpose.

The provisions contained in this article are to be understood without prejudice to the privilege of the interested persons to bring any proceedings before the Courts, which they may consider of assistance to them.

ART. 138. In order that the purchasers of public lands, after all the payments thereon have been liquidated, may cancel the mortgages created on the estates, to secure the purchase price, they shall request a certificate of their total solvency from the proper office of the Interior Department, showing the receipts and bills of sale for this purpose.

After the receipts have been compared with the proper books, a certificate shall immediately be issued describing the estates and stating that all payments have been made, together with the day on which each one was paid into the Treasury.

In the certificate mentioned there shall also be clearly and definitely stated that, in the name of the State, the proper Chief of the Interior Department consents to the cancellation of the mortgage which existed

on the estate until its entire solvency from the responsibilities contracted by the purchaser.

The certificate shall be delivered to the purchaser without delay, the receipts and the instruments being returned to him at once, after a memorandum has been made on the latter stating that the certificate had been issued, and also its contents.

ART. 139. Registers shall not cancel any record of a legal mortgage made by a mandate of a Judge or Court, except by virtue of another mandate.

Judges or Courts shall not order said cancellations until the extinction of the responsibility secured by the mortgage has been proven to them, or the fulfillment of the formalities which may be necessary in accordance with the law, according to the cases, to alienate, encumber, or release mortgaged realty.

If a legal mortgage has been recorded without a judicial mandate, the Register shall not cancel or make any other entry by virtue of which it would be legally canceled, unless the public instrument presented for this purpose shows that the formalities mentioned in the preceding paragraph have been complied with.

ART. 140. Cancellations of cautionary notices shall be proper:

First. When, by virtue of a final decree, against which no appeal in cassation has been brought, the defendant is released from the claim to ownership, which had been entered in accordance with the first paragraph of Article 42 of the law.

Second. When the plaintiff abandons the suit or withdraws therefrom by presenting to the Register a decree showing that either of these steps has been taken.

Third. When in the summary action for possession, or criminal or compulsory proceeding, the attachment is ordered to be set aside, or the estate entered is conveyed or awarded in payment.

Fourth. When the sequestration, or the prohibition to convey, is ordered raised.

Fifth. When the action brought for the purpose of obtaining any of the decrees mentioned in number 4 of Article 2 of the law, has been finally refused.

Sixth. When a declaration of insolvency or bankruptcy is refused or rendered ineffective.

Seventh. With regard to the use by virtue of widowhood, when the widowed spouse makes the right effective in any of the forms established by Article 838 of the Civil Code.

Eighth. When a legatee collects his legacy.

Ninth. When an agricultural creditor has been paid.

Tenth. When a notice is converted into a definite record in favor of the same person in whose name it had been created, or his legal attorney.

Eleventh. When the notice becomes ineffective by virtue of the expiration of the period mentioned in Articles 86, 92, and 96 of the law.

Twelfth. When the person in whose favor the entry has been created renounces his right, should he have the legal capacity to do so.

ART. 141. The renunciation treated of in the last paragraph of the preceding article shall be made by virtue of a public instrument, if the obligation recorded or entered which it is desired to cancel has been created in a similar manner. If the record or entry has been created by virtue of a judicial decree, the renunciation must be made by a petition in writing, addressed to, and ratified before the same Judge or Court which issued the decree.

If it is desired to cancel a cautionary notice created by virtue of a petition addressed to the Register by the persons interested or by their legal representatives, it shall be sufficient that they present another to him, setting forth their renunciation, and requesting the cancellation. In such cases the Register shall require that the renunciation be ratified in his presence, and shall assure himself as to the identity of the person and as to his capacity to exercise the right in question.

ART. 142. A cautionary notice may be converted into a record when the person in whose favor it has been created definitely acquires the right entered.

This conversion shall take place by means of a record referring to the entry itself, stating:

First. The date, folio, and letter of the cautionary notice.

Second. Its reason and object.

Third. The manner in which the right entered was acquired and the name of the person in whose name the entry was made.

Fourth. The details necessary for records, prescribed by numbers 3, 6, 7, and 8 of Article 9 of the law.

ART. 143. When a third person acquires the right entered in such manner that the latter is thereby legally extinguished, the record must be made in the name of the grantee, if it is proper, in the same manner as other entries, but stating the reason therein, and also that the cautionary notice is thereby canceled.

After the cancellation has been made, it shall be so stated by a note in the margin of the canceled entry.

ART. 144. If after an estate has been alienated, or an annuity (censo) has been redeemed, and the corresponding instrument executed, the sale or redemption is rescinded or annulled by an administrative decision, the public administration shall be requested to demand that a cautionary notice of this decision be made, presenting a certificate thereof in duplicate, which must also state the conditions necessary for an entry, according to Article 72 of the law.

If the period has elapsed within which, according to the provisions in force, the person interested may bring an action against these decisions by means of administrative actions, without his doing so, the Director of the branch having jurisdiction of the estate or right, shall procure the record of ownership in favor of the State or of the corporation to which it belongs, if it is to remain for amortization; and

the cancellation of the record of the annulled contract only when said estate or right is to be alienated in accordance with law.

A legacy shall be considered as demandable, for the intents and purposes of number 7 of Article 42 of the law, when its immediate payment or delivery can be legally sued for, either because the time has elapsed, or the conditions to which it was subject have been complied with, or because there exists no legal obstacle preventing or delaying said payment or delivery.

Legacies consisting of annuities (censos) or periodical incomes, shall be considered as demandable from the time an action can be brought for the collection of the first annuity (censo) or income.

ART. 146. The mortgage treated of in Articles 88, 89, and 90 of the law, must be created by the proper partition against the person to whom the realty encumbered by the annuity has been awarded, and in default thereof, in the public instrument executed by the grantee of the annuity and the encumbered legatee or heir; or, should the latter not come to an agreement as to the manner of creating said obligation, by virtue of a decree.

When a testamentary action has been brought, this question shall be proceeded with and decided as an interlocutory matter. When such action has not been instituted, the question shall be decided in a declaratory suit.

ART. 147. Registers shall officially cancel entries made on account of the suspension of judicial mandates as soon as they become extinct, because the time fixed in Article 96 of the law for the duration of these entries has elapsed.

For the extension of the time of the entry in the case mentioned in Article 96 of the law, the interested person shall present a petition to the Judge or Court, stating the reason why he was not able to correct the defect which caused the suspension of the record, and accompanying thereto the written proofs justifying his right. The Judge or Court shall give a copy of the petition to the other interested person, and, if the latter should not agree to it, he shall hold an oral trial in accordance with the provisions prescribed in Article 57 of the law.

If the Judge or Court consider the defect as capable of correction, and the reason adduced by the plaintiff be duly proved, he shall order such extension; otherwise refusing it.

The extension shall be entered in the Registry by means of a new notice. In order that it may be effective, it is necessary that the mandate ordering it be presented in the Registry before the first period of sixty days has elapsed.

ART. 148. The provisions contained in Article 77, regarding the determination made by Registers as to the legality of instruments, by virtue of which the records are demanded, shall also be applicable to the determination made by them of instruments by virtue of which cancellations are to be made, in accordance with the provisions contained in Article 100 of the law.

ART. 149. When a Register suspends the cancellation of a record or of an entry, either because he has determined the document presented for this purpose as insufficient, or because he is in doubt as to the competency of the Judge or Court which has ordered it, in accordance with the provisions contained in Articles 100 and 101 of the law, he shall enter this circumstance by means of a cautionary notice, if it is requested, in which shall be stated the record or cancellation requested, the document presented for this purpose, its date, the date of its presentation, and the reason for the suspension.

ART. 150. The notice mentioned in the preceding Article shall be officially canceled by the Register:

First. In the case of Article 100 of the law, sixty days after its date, if the defect contained in the document which caused the entry of the notice has not been corrected before then.

Second. In the case of Article 101 of the same law, when the incompetency of the Judge or Court ordering the cancellation is declared by final judgment, if within the thirty days following the date of said declaration no decree from a competent Judge or Court is presented in the Registry, by which said cancellation is ordered.

ART. 151. Whenever the suspended cancellation is made before the cancellation of the entry of suspension, the cancellation shall be effective from the date of said suspension.

The cancellation in the latter case shall make special reference to the entry mentioned.

ART. 152. When a Register suspends a cancellation because he is in doubt as to the competency of the Judge or Court which ordered it, he shall give notice thereof in writing to the person interested, so that, should he desire to do so, he may appear before the President of the Audiencia within the period of ten days, presenting the document by virtue of which said cancellation has been requested.

ART. 153. Should the President deem any other data from the Register necessary to make a decision, he shall request it of said Register, and shall decide what is proper without further proceedings.

The decision rendered shall be communicated to the Register by means of the proper order, and the person interested shall be notified in the usual manner.

ART. 154. When the interested persons or the Judges appeal to the Audiencia from the decision of the President, the Government Division thereof shall take cognizance of the question, hearing the plaintiff in writing once only, after receiving a report from the Register, and requesting that the documents it may consider necessary, be furnished.

ART. 155. When the cancellation is a partial one, it shall clearly indicate the part of the right extinguished, the part of the estate remaining, as well as the reason for its reduction.

ART. 156. When an entry is canceled, so that the right entered may be merged in the ownership of the person who had previously recorded

it in his favor in an unencumbered condition, a statement of this fa shall be made in the cancellation.

ART. 157. The cancellation shall be entered in the proper book an place, according to its date, and shall state:

First. The number of the record canceled.

Second. The document by virtue of which the cancellation was made stating, if it is an instrument, the names of the parties thereto, that o the Notary before whom it was executed, and its date; if it is a writte petition, the names of the signers, the date, the fact that said signatures have been ratified in the presence of the Register, a clause stating that said persons are personally known, and that, according to the Registry, none of them has lost the right accorded him the by canceled record; if it is a judicial decree, the name of the Judge or Court which issued it, its date, and the name of the Secretary who certified it.

Third. The day and hour of the presentation of the instrument, petition, mandate, or judicial order by virtue of which the cancellation is made in the Registry, with a reference to the proper entry of presentation.

Fourth. A statement to the effect that the document presented has been filed in the proper package.

Fifth. The date of the cancellation.

Sixth. The signature of the Register.

When an instrument of cancellation is to be recorded in several Registries, the original shall be presented in all of them, and at the foot thereof the Registers, in their proper order, shall make the necessary memorandum.

The interested person, in presenting the instrument to each Registry, shall accompany thereto an ordinary copy of the same, executed on common paper, which shall be compared by the Register, and if it is a true copy, he shall state at the foot thereof, *In conformity with the original presented*, then the date, and under the latter the person presenting the document shall sign, or a witness, if the latter should not be able to do so, said copy being filed.

ART. 158. Of all cancellations made, the Register shall make a note at the margin of the record or entry canceled, worded in the following manner:

The adjoining record (or entry) is canceled, number ——, in volume ——— of this Registry, folio ———, entry number ——. (Date and surname of the Register.)

ART. 159. Whenever there is litigation concerning the inefficiency of some cancellation, the provisions regarding records mentioned in Articles 88 and 89 of these regulations shall be observed.

A note of the suit brought concerning the inefficiency shall be placed in the margin of the cancellation involved and in that of the other entries in which reference to said cancellation was made.

TITLE V.

MORTGAGES.

SECTION ONE.

MORTGAGES IN GENERAL.

ART. 160. Recorded mortgages shall be strictly charges on realty, the mortgage debts being collectible no matter what subsequent interest has been acquired on the same mortgaged property.

ART. 161. As, according to number 5 of Article 111 of the law, there are considered as mortgaged the indemnities allowed or due the owner of the mortgaged property for the insurance of the latter or of the crops, or on account of the condemnation of the lands or buildings, woodlands or other things situated on the same, if said indemnities are paid before the mortgage falls due, their amount shall be deposited in the manner agreed to between the persons interested; and should they not come to an agreement, in the public institution designated by the Judge or Court, until the obligation is canceled.

ART. 162. The owner of the accessions and improvements which are not considered mortgaged, according to the first paragraph of Article 112 of the law, who chooses to collect the amount, according to Article 113, in case the estate is alienated, shall be paid in full from the proceeds of the sale thereof, even though the balance is not sufficient to pay the mortgage debt. But if the accessions or improvements may be separated without damage to the estate, and the owner choose, however, not to take them away, they shall be alienated apart from the estate, and only the price thereof shall be turned over to said owner.

ART. 163. In the case of a sale mentioned in the second paragraph of Article 112 of the law, the instrument executed for this purpose shall state as precisely as possible that the part of the land sold does not contain any machine, chattel, object, or construction of any kind whatsoever, also briefly mentioning the prior encumbrances on the estate and on said part of the land. In the proper record in the Registry of the new estate formed by this part of the land, express mention shall be made of these statements in the instrument, the Register refusing said record if it appears from a prior one that the statements made are incorrect.

The error shall not be capable of correction if, according to the information contained in the Registry, the land sold contains any of the additions mentioned in the second paragraph of Article 112 of the law.

The record of the sale shall be communicated to prior mortgagees, in the manner prescribed in Article 167 of these regulations, so that within the period of thirty days, which can not be extended, they may question the correctness of the facts recited in the proper action.

ART. 164. Registers shall not record any mortgage on various properties subject to the same obligation, unless by agreement between the

parties, or by virtue of a judicial decree, in a proper case, the amoun is previously fixed for which each estate is to be liable.

The parties may agree to the distribution mentioned in the preceding article, in the same instrument which should be recorded, or in any other public instrument or petition directed to the Register, and signed or ratified before him, by the interested persons.

The record in these cases shall be made in the manner prescribed by article 252 of these regulations.

ART. 165. The provisions contained in the preceding article shall not be applicable to cautionary notices except when they are converted into definite mortgage records and encumber various properties.

The cautionary notice of various estates shall be entered in the special Registry for each estate, stating also the amount of the debt or obligation for which said estate is liable.

ART. 166. When the mortgaged estate deteriorates, the value diminishing through the imposition, fault, or will of the owner, the mortgagee may request the Judge of the subdistrict in which said estate is situated to admit the proofs of these facts; and if their correctness is proven, and the fear that the mortgage is insufficient shall appear well founded, a decree shall be issued ordering the owner to do or not to do what shall appear necessary in order to avoid or remedy the damage.

If afterwards the owner should insist in abusing his right, the Judge shall issue another decree placing the property under judicial administration.

ART. 167. Whenever Registers, in compliance with the provisions contained in Article 125 of the law, cancel any debts subsequent to the first, because the sale or award of the property in payment of the debt has taken place, he shall communicate the fact of the cancellation and the reasons therefor to the persons who may have the other recorded debts in their favor, so that they may make use of the rights against the debtor, mentioned in the last paragraph of Article 125 of the law.

Said notice shall be made by means of an official document (cedula), charging therefor the fees contained in the judicial schedules of fees for Clerks of Courts of First Instance in the preparation of administrative documents, if the owners of the debts or their legal representatives reside within the jurisdiction of the Registry.

Should they reside outside of said jurisdiction, or should their residence be unknown, the proper announcement of the notice shall be posted in the Registry, said notice being considered served after sixty days have elapsed.

ART. 168. If a mortgage debt or its interest has fallen due, in whole or in part, the proceedings for its collection, in so far as they are directed against the property encumbered by the mortgage only, shall be subject to the provisions contained in Article 128 of the law and the following articles and those of these regulations, complemented in the manner

prescribed therein by the law of Civil Procedure for Cuba, Puerto Rico, and the Philippines, respectively.

ART. 169. The following must be presented with the first document drawn in the proceedings:

First. The proofs of the identity of the person, including those which show the appointment of the solicitor (procurador), when the creditor himself personally, or his legal representative, does not take part therein.

Second. The instrument or instruments of the credit, with a memorandum of their record, and with the formalities required by the law of Civil Procedure for authorizing a writ of execution.

Third. A certificate of the Register of property, of a date subsequent to that on which the obligation fell due, declaring that the mortgage does not appear canceled, nor that its cancellation is imminent according to the Day Book. This certificate should also contain a literal copy of the records of any other annuities (censos), mortgages, and other incumbrances affecting the mortgaged estates as well as of the transfer of said estates to third persons.

This certificate can not date back more than fifteen days before the institution of the proceedings.

The document referred to in this article, which shall be always authorized by the signature of a lawyer, shall detail the facts and legal reasons, showing that the debt was incurred and exists, and that it is recoverable, and also the competency of the Court; it shall expressly state the exact amounts collected by way of interest, or on account of the principal of the debt, stating also the net amount of the claim, which, by the mere act of instituting the proceedings, the creditor will contract, making himself liable to indemnify any loss or damage caused the debtor or third persons interested therein, by malice or negligence in the true statement of facts and of the circumstances, which the Judge has to take into consideration to authorize the proceedings and to continue them.

ART. 170. The Judge shall examine the petition and the documents upon which it is based, and should he consider the legal requisites complied with, he shall issue a decree without further proceedings, summoning the persons who, according to the certificate of the Register, are in possession of the mortgaged property, whether it is in the hands of the debtor, or whether it has been transferred to a third person in whole or in part, so that within thirty days they may make the payment of the sum sued for, with costs, should the latter be also guaranteed by the mortgage; otherwise there shall be a public sale of the mortgaged property.

Should the Judge consider that said requisites have not been complied with, he shall also refuse the demand requested by means of a decree, which in this case shall be appealable for review and also to stay proceedings.

The Judge of competent jurisdiction shall be the Judge of the pla in which all the property mortgaged is situated, no change of ven being admissible. When the mortgaged property is located withi different judicial districts, the Judge of competent jurisdiction shall b the one to whom the matter shall be expressly submitted, as provide by the instrument, and in default of said provision the Judge of th place in which the realty having the greatest value is located, or an of the estates of the greatest value, should two or more have an equa value according to the instrument. If the latter has been recorde before the law went into operation, and it does not state the value o the estates, the amount of the mortgage obligation distributed among them shall be taken into consideration.

ART. 171. When all the mortgaged property is in the hands of one owner only, according to the certificate of the Register, the formal demand for payment shall be served on the owner at his domicile, should he live in the municipal district where any of said property is situated. The same procedure shall be observed with regard to each owner of different properties, should there be several. If any of those on whom the demand for payment is to be served does not reside within the municipal district where some of the property is located, the demand shall be served on the person in charge of the estate in any legal capacity, so that he may communicate it to the owner without delay. If the estate should be abandoned, so that nobody is in charge thereof, the demand shall be served on the administrative municipal official of the town, with the same request that it be communicated to the owner.

When the ownership of some mortgaged realty is divided, because the title or direct ownership is vested in one person and the use or some interest in the estate in another, for the purpose of the demand, the person in charge of the estate or the person who represents him shall be considered the owner in the name of all.

If any person from whom payment is to be demanded figures in the certificate of the Register as owner of several mortgaged estates, and the demand is to be served on the person in charge, or on the municipal authority, the estate which, among those possessed by the same person, appears to have the highest value according to the petition shall be taken into consideration, or any of those which, being equal in value, exceed the value of the rest. In default of any valuation the amount of the mortgage obligation shall be taken into consideration.

When the formal demand for payment is not served at the domicile of the person from whom payment is due, nor served on his attorney in fact, or on the lessee who has charge of the estate, it shall also be made public by means of edicts which shall be published in the "Gaceta" of the proper island, and in such cases the period of thirty days shall be computed from the date of publication in said official newspaper.

If the domiciles of the persons interested in the obligations which have been recorded subsequently to the interest of the claimant appear in the certificate of the Register of Property, the Judge shall order, at the time of the formal demand for payment, that the notice thereof be served on said interested persons at their domiciles, if they are to be found there.

ART. 172. After the period of the demand for payment has expired and the debtor has not paid the sum or presented a public instrument of cancellation with the note of presentation, in any of the Registries where cognizance thereof is to be taken, or a certificate of the Register stating that the mortgage in question has been cancelled, the Judge shall order, at the instance of the plaintiff, that the mortgaged property be sold at public auction within the period of twenty days, notices being posted in the usual places of the town where the proceedings are being held and of the place within whose jurisdiction the property is situated, and publishing them in the "Gaceta" of the island, setting forth the titles, in so far as they are contained in the documents accompanying the first petition. The decrees and other instruments that the plaintiff may have considered advisable to bring, shall be exhibited in the office. It shall be understood that all bidders accept the sufficiency of the title.

These notices shall fix the day, hour, and place of the auction, and shall also serve to notify creditors thereof who had their interests in the property recorded or entered subsequently to those of the claimant, and against whom the notice prescribed by the last paragraph of Article 171 is ineffective, it being necessary for this purpose to state the names of said persons interested as they appear in the certificate of the Register, so that they may be present at the auction, should they so desire.

When the estimate of the property agreed to in the instrument constituting the loan, by virtue of which the proceedings are held, exceeds the amount of the preferred obligations secured by the property, said estimate shall be inserted in the notices as the amount acceptable at the public sale. When the preferred obligations exceed it, their total amount shall be the minimum sum acceptable at the public sale.

To fix the amount of the preferred obligations, the Judge shall capitalize the amount of the annuities (censos) and other perpetual liens which are preferred, and which shall be charged to the purchaser and deducted from the price, this fact being stated in the notices.

Among the obligations the payment of which is treated of in the preceding paragraph, shall be included, at the instance of the claimant, the obligations guaranteed by a legal mortgage to the Public Treasury or to the insurers, and the amounts expended by the claimant himself to extinguish said obligations.

The public sale shall take place in the manner prescribed for summary actions for possession; but when two-thirds of the figure fixed in

the notices do not exceed the amount of the preferred obligations, this amount shall be the minimum admissible for the bids.

Should there be no bidder at this first auction, the claimant may request that the property be awarded him for the lowest figure which could have been admitted by the auctioneer, according to the preceding paragraph, assuming all prior incumbrances, and being obliged to assign any surplus there may be, after his debt has been paid. This surplus shall be delivered to the proper persons, the judge depositing it subject to the order of said person, in the public institution designated for this purpose, should it not be delivered within ten days following the assignment.

Should the claimant not demand the award, he may request that the mortgaged property be again offered at public sale, reducing the figure acceptable at the first one by 25 per cent, provided this reduction protects prior debts. For this purpose the claimant must present a new certificate from the Register, stating that his mortgage has not been canceled, if the proceedings have been suspended for more than six months. This public sale shall take place in the same manner as the first one, bids amounting to two-thirds of the reduced price being admissible, provided they would pay the claims preferred to those of the claimant. The latter may also request the award, under the conditions stated, if the second auction is totally or partially without result.

If the second auction does not effect the award or sale, others may be held at the instance of the claimant for an amount not less than the preferred credits, said claimant complying with the requisites mentioned in the preceding paragraphs, if proper. In such case the award for said price may also be requested, with the obligation of meeting said charges when they fall due, being subrogated in the place of the debtor, so far as the charges are concerned.

ART. 173. If any public sale has taken place in which bids equal to the debts preferred to that of the claimant were admissible, and the property should not have been sold, nor the award requested within the ten days following, the proceedings shall be closed without further remedy, the right of the claimant to bring an action being reserved, by way of the ordinary declaratory suit and proceedings to obtain an execution for the collection of his credit, with the costs of the summary proceeding, against any property whatsoever belonging to the persons responsible.

ART. 174. After the mortgaged estate has been sold or awarded, and the corresponding price has been paid, in a proper case, the instrument of transfer or the decree of award shall be officially executed by the inferior Court representing the owner of the mortgaged property, should the latter not appear voluntarily to execute it on the day fixed, which shall be the earliest one possible; and the new owner shall immediately thereafter be placed in judicial possession, should he request it.

After the estate has been sold or awarded and the price has been applied in the proper manner, the proper cancellations shall be made,

in accordance with the provisions of the Mortgage Laws and those of the Civil Procedure. This shall be construed without prejudice to the other rights and actions which the remaining creditors or those who have not been wholly satisfied may exercise against the debtor.

ART. 175. The summary proceedings referred to in this Section can not be stayed by means of proceedings in the nature of a demurrer, nor by any other proceedings at the instance of the debtor of the third party in interest, nor at that of any other person presenting himself as an interested party, except in the following cases:

First. If documentary proofs are brought forward as to the existence of a criminal procedure on account of the forgery of the mortgage instrument which constitutes the subject-matter of the proceedings, in which a right of complaint has been admitted, or an order of prosecution has been issued.

Second. If a third person enters a claim of ownership, necessarily accompanying therewith his title to the estate in question, recorded in favor of said third person, prior to the entry of the debt of the claimant and not canceled in the Registry.

Third. If a certificate of a Register is presented, stating that the mortgage on which the proceedings are based is canceled, or an authentic copy of the public instrument of the cancellation of the same, with the note of presentation in one of the Registries which is to take cognizance thereof, executed by the claimant, or by his principals or legal representatives, the deed of conveyance, should any be in existence, also being shown by means of a document, in a proper case.

In the first case the suspension shall continue until the criminal action has been terminated, the proceedings being continued then if the forgery has not been established.

In the second case it shall continue until the suit of the third person has been decided.

In the third case the Judge shall order the parties to appear before him four days after the citation; he shall hear the parties, admit the documents they may present, and he shall render such decision as he may deem proper, in the form of a decree, within two days.

This decree shall be appealable for review, and also to stay proceedings, when it orders the suspension.

All other actions that may be brought, by the debtor as well as by the third parties in interest, and other interested persons, including those regarding the nullity of the title or of the proceedings, or regarding the lapse, constitution, extinction, or amount of the debt, shall be discussed in the proper final trial, without ever causing a stay of the summary action for possession or avoiding them. The competency to take cognizance of this declaratory suit shall be determined by the usual rules.

At the time the action is brought, in accordance with the preceding paragraph, or during the course of the suit, a demand may be made that the effectiveness of the sentence be secured by the retention of

the whole or of a part of the amount which, on account of the summary action for possession, is to be delivered to the claimant. The Judge shall order this retention made in view of the documents presented, should he consider the reasons adduced sufficient. If the claimant guarantees the amount which is ordered retained pending the decision of the declaratory suit, to the satisfaction of the Judge, the retention shall be raised. If the person requesting this measure is not well known to be sufficiently solvent, the Judge must demand a prior and sufficient security to answer for the costs of delay and the compensation for any other loss or damage which may be caused the creditor thereby.

Creditors who have their right recorded before the present law went into operation may select this summary procedure, but when the instruments of their credits do not contain an agreement of the debtor to a determined price for the auction, they must prove said agreement by means of a public document, or demand an appraisement, in accordance with the law of Civil Procedure, to prepare the notice of the public sale, it being understood that the rules of this section which fix the minimum figure to secure preferred obligations shall always be applicable. The procedure for the appointment of an expert shall be held when the formal demand for payment is made, and shall involve the same persons on whom the latter must be served.

If during the course of the proceedings the estate or some of the mortgaged estates pass into the hands of another owner, the latter, proving the record of his title, may demand that the decrees filed in the Clerk's office be presented to him, and the Judge shall consent thereto without stopping the course of the proceedings, subsequent proceedings being addressed to him as subrogated to the principal.

ART. 176. Against the decisions rendered in these summary proceedings the claimant may make use of the ordinary remedies prescribed by the law of Procedure, when it is not otherwise prescribed in this section. The remedies of other persons interested in any manner whatsoever shall never stay nor avoid the course of the summary action for possession regulated by this section, except in the cases of suspension briefly indicated herein.

The provisions of the law of Civil Procedure in force in Cuba, Puerto Rico, and the Philippines shall be applicable to these proceedings as supplementary, when not in conflict with the provisions contained in the Mortgage Law and these Regulations.

SECTION SECOND.

VOLUNTARY MORTGAGES.

ART. 177. Whenever, in accordance with the provisions contained in Article 141 of the law, a mortgage is created by a third person without sufficient authority to do so, and is ratified by the owner of the mort-

gaged property, a new record shall be made, in which shall be stated the reason causing it, the previous record being canceled. When a mortgage is created in favor of the State, civil corporations, or collective bodies, and its acceptance is not indicated in the instrument, a record shall be made, but without prejudice to this circumstance being entered by means of a marginal note, after the mortgage or bond has been approved by the proper authority or official.

This note shall have all its legal effects from the date of the record to which it refers.

ART. 178. To indicate in the Registry the compliance or noncompliance of conditions, or the fulfillment or nonfulfillment of future obligations, treated of in Article 143 of the law, any of the interested parties shall present to the Register a copy of the public document from which this appears, and, in default thereof, a petition signed by both parties requesting the entry of the marginal note and clearly stating the facts which must cause its entry.

If either of the interested parties refuses to sign the petition, the other may institute a suit, so that the matter, being brought up in a declaratory suit, the proper decree may be issued. Should the decree grant the demand, the Register shall make the marginal note by virtue thereof.

ART. 179. The marginal note treated of in the preceding article shall be worded in the following manner:

The obligation (here describe it) between A and B having been fulfilled (or not having been fulfilled), the condition (here describe it) having been complied with (or not having been complied with), on which question the efficiency of the mortgage created in this record number —— depended, A has presented (here a statement of the document by virtue of which the marginal note is requested), from which it appears that ———. Therefore, this mortgage shall be considered effective and in force (or not in force) from the date of its entry, and that this may appear I make this marginal note on ———. (Date and surname).

ART. 180. If the condition complied with is a condition subsequent, a formal cancellation shall be made, after the provisions contained in Article 178 have been complied with.

ART. 181. In accordance with the provisions of Article 144 of the law, when the act or agreement between the parties produces a total or partial novation of the recorded contract, a new record shall be made and the previous one canceled. When it causes the dissolution or inefficacy of said contract, entirely or partially, a complete or partial cancellation shall be made; and when the object thereof is to make effective a recorded contract dependent on conditions precedent, or to show the payment of a part of a mortgage debt, a marginal note shall be made.

ART. 182. Mortgage obligations payable to bearer, issued by the Societies of Public Works, can not be specially or expressly recorded. However, for the purpose of securing the mortgage right against third persons, which may be established in favor of the bearers thereof, according to the Code of Commerce, the mortgage must be created by

virtue of a public instrument and recorded in the Registry, as prescribed in Article 146 of the law.

ART. 183. In the instrument creating a mortgage, securing obligations payable to bearer, referred to in the preceding article, the number and total value of the obligations issued, for the security of which the mortgage is created, must be stated, the series to which they belong, the number and face value of each one, the date or dates of their issue, the interest they bear, and other circumstances fixing and determining the kind of instruments and their values, as well as the property mortgaged—that is, whether it is the works or the profits or the entire line, or only of a part thereof. All these circumstances shall be stated in the record, which shall only be recorded in the Registry within the jurisdiction of which the principal point or beginning of the road, canal, or public work is situated, without prejudice to the records which must be made in other Registries, when the mortgage extends to the property referred to in the last portion of Article 72.

ART. 184. It being impossible to designate the name and surname of the person or persons in whose favor the record is made, because the obligations are payable to bearer, a statement shall be made that the instrument is created in favor of the holders of the obligations referred to in the instrument, and the part relating to each obligation.

ART. 185. Before recording the assignment of a mortgage credit, notice thereof shall be given the debtor, unless he has renounced this right in a public instrument, or when it comes within the provisions of Article 153 of the law, by means of a document drafted and signed by the Notary who certified to the instrument, stating therein only the date of the assignment, whether it is total or partial, and in the latter case the amount assigned, and the name, surname, residence, and profession of the assignee. The Notary shall serve this notice or have it served on the debtor.

If the latter can not be found at his residence, the delivery shall be made in the manner prescribed for summons in the first paragraph of Article 268 of the law of Civil Procedure for Cuba and Puerto Rico, and 252 of that for the Philippines.

ART. 186. If the debtor does not reside in the town in which the instrument is executed, the contract shall be recorded and the notice considered as served, but the assignor shall remain under the obligation to make a judicial request that search be made for said debtor, in order to communicate to him the notice referred to, in the manner prescribed in Articles 266, 268, and 269 of the law of Civil Procedure for Cuba and Puerto Rico, and 250, 252, and 253 of that for the Philippines, and under the responsibility established in Article 154 of the Mortgage Law.

ART. 187. Assignments of mortgage rights shall be entered in the Registry by means of a new record in favor of the assignee.

Transfers shall not be entered in the Registry, nor shall it be necessary to notify the mortgagor thereof in the excepted cases mentioned in Article 185.

SECTION THIRD.

LEGAL MORTGAGES.

ART. 188. Every Notary before whom a public instrument is executed involving a right to a legal mortgage in favor of some person shall notify the proper persons, if they take part in the instrument, of the obligation to create it and of the right to demand it, stating in the said instrument that this has been done.

ART. 189. If the person having the right to the legal mortgage is a married woman, a minor child, or a ward, the Notary shall also, by an official communication, notify the Register of the execution of the document, which he shall forward within the period of eight days, and in which he shall make a concise summary of the obligation contracted and of the names, status, and circumstances of the parties thereto.

The Register shall acknowledge its receipt to the Notary.

ART. 190. If the thirty days following the execution of the instruments referred to in the two foregoing articles have elapsed without the corresponding mortgage being created, and this mortgage is one of those which, in accordance with the law, can or must be demanded by persons who have not taken part in the instrument or contract giving rise thereto, the Register shall communicate the fact to said persons, or to the Department of Public Prosecution, in case it is the duty of the latter to exercise said right in accordance with the law.

The Department of Public Prosecution shall acknowledge receipt thereof.

ART. 191. Registers shall submit a report every six months to the President of the Audiencia of the instruments or contracts which have been submitted to the latter, in accordance with Article 189 of these regulations, and which have not produced the corresponding mortgage record, as well as of the steps they may have taken in compliance with the provisions contained in the preceding article.

DOWRY MORTGAGES.

ART. 192. The special mortgage which, according to number 3 of Article 169 of the law, must be created by the husband for the personal property, chattels, money, and other property not mortgageable which is delivered to him by reason of marriage, with the obligation of returning the same or its value, shall be created in the dowry contract itself or in a distinct public instrument.

ART. 193. The record of real estate which forms part of the appraised dowry shall state, in so far as may be applicable, the details required by these regulations for records in general, and in addition, in cases where it is proper to make full records according to the law, the following details:

First. The name of the person creating the dowry and the capacity in which he does so.

Second. A statement that the marriage has been agreed to or has already been celebrated, and, in the latter case, the date of its celebration.

Third. The names, surnames, age, status (whether formerly married or single), and residence of the contracting parties, and the profession of the husband, should it be known.

Fourth. A statement that an appraised dowry has been constituted, and the amount thereof.

Fifth. A statement that a part of said dowry consists in the estate which is the subject of the record.

Sixth. The value given said estate in the appraisement of the dowry, stating whether this was arrived at by mutual agreement or by judicial intervention.

Seventh. The delivery of the dowry to the husband.

Eighth. The conditions stipulated in the marriage contract and which may affect the ownership of the husband in said estate.

Ninth. A statement of the acquisition of ownership by the husband, subject to the laws and special conditions stipulated.

Tenth. A statement that the legal mortgage on the estate has been created and recorded.

ART. 194. The record of the mortgage created by the husband on his real property in favor of the wife, the dowry being appraised, shall state, in so far as relevant, the details required for records of voluntary mortgages; and if full records are proper in accordance with the law, the following shall also be embraced therein:

First. The agreement to marry or the celebration of the marriage, stating the date of one or the other.

Second. The name, surname, residence, age, and previous status (whether married or single) of the wife, should they be known.

Third. A statement of the documents by which the dowry was created, the gifts offered by reason of marriage, by which the delivery to the husband of the dowry, or personal property in addition to the dowry, was made, stating the obligations which have been accepted by each one of the contracting parties in virtue thereof.

Fourth. The name, surname, domicile, and legal representation of the person who created the dowry, stating that the latter is appraised and that the Notary certifies as to its delivery.

Fifth. In case a mortgage is also created on account of gifts offered, or personal property in addition to the dowry delivered, a declaration that one or the other is considered as an increase of the dowry and that the Notary certifies as to the delivery of the personal property in addition to the dowry.

Sixth. The total amount of the dowry, of the personal property in addition to the dowry, and of the gifts, with the total appraised value of property of each kind delivered in payment, real estate, gold and silver ornaments and precious stones; deeds or documents of public

and private credit, personal property, chattels, clothing, and money being considered as different kinds of property.

Seventh. The name, surname, and legal capacity of the person who demanded the dowry mortgage, and, in case it was created by virtue of a judicial decree, the deciding clause thereof, its date, the name of the Judge or Court which issued it, and that of the Clerk who certified it.

Eighth. The acceptance and declaration of the sufficiency of the mortgage and a statement of the amount for which the estate is liable according to the distribution made in accordance with the instrument, among the properties mortgaged, by the person creating the dowry or who demanded said mortgages or who should, in a proper case, decide on the sufficiency of the mortgage; and if judicial proceedings have been instituted in the matter, the judgment rendered, its date, the name of the Judge or Court who issued it, and of the Clerk who certified the same.

ART. 195. When the dowry, or personal property in addition to the dowry, is delivered to the husband unappraised, and its title is recorded in the name of the wife, said delivery shall be recorded by means of a memorandum at the margin of the record referred to, even when it is in the old books, in the following terms:

The estate of this number ——, record number ——, has been delivered to A, as husband of Miss B, unappraised (or appraised at ——— pesetas) by virtue of unappraised dowry, created by C in a public instrument executed in ——— on such a date, before the Notary D ———, or by virtue of personal property in addition to the dowry of said lady and as an increase in the dowry created. (Date and surname.)

ART. 196. The mortgage created by the husband on his own property as security for the return of the personal property or chattels delivered as unappraised dowry, or as personal property in addition to the dowry, or as an increase of the dowry of the same kind, shall be recorded, in accordance with the provisions contained in these regulations for records in general, in the special Registries of the estates on which the mortgage is created.

ART. 197. The records treated of in the preceding article shall contain the details required for entries of appraised dowries, the only difference being a statement of the unappraised character of the same, and that the appraisement was made only for the purpose of fixing the amount for which the estate would be liable in case the property should not be in existence, or could not be returned, at the time of its restitution.

ART. 198. If the unappraised dowry property should not be recorded in favor of the wife at the time of the creation of the dowry mortgage, said record shall be made in her favor in the ordinary form and with the details stated in Article 193 of these regulations, with the exception of the fourth, sixth, ninth, and tenth; but the unappraised character of the dowry shall be mentioned in their place, and that the ownership continues vested in the wife, subject to the laws.

If the record has been made in this manner, the marginal note provided by Article 195 of these regulations shall be omitted.

ART. 199. When the Department of Public Prosecution receives notice of the delivery to the husband of the dowry of a woman who is an orphan or a minor, without the proper mortgage, he owning property on which it can be created, the Department shall appeal to the Judge or Court to compel the husband to create the legal mortgage, proceeding in this case in the manner prescribed in Article 166 of the law.

ART. 200. All dowry instruments must necessarily contain a statement of the mortgage which has been created, or which is about to be created in a separate instrument, or a statement to the effect that the dowry is not secured in this manner, the husband not possessing any mortgagable property. In the latter case, the husband shall formally declare that he does not possess such property, and shall obligate himself to mortgage the first real estate he may acquire, in compliance with the provisions contained in Article 186 of the law.

A wife, being of age, who owns the property which is to be given in dowry, and who has the free disposition thereof, need not insist that the husband obligate himself as established in the preceding paragraph; but in such case she must be notified of her privilege by the Notary, who shall state this fact in the instrument under his responsibility.

MORTGAGES FOR PROPERTY SET APART.

ART. 201. The inventory and appraisement of property set apart, which must be presented to the Inferior Court, according to Articles 190 et seq. of the law for the purpose of creating the proper legal mortgage, shall be those which have been made judicially or extrajudicially, and should neither have been made, those made by the father, the mother, or the ascendant referred to in Article 199 of the law, stating the value of the property appearing by a certified copy of the award of the same to them, and in default thereof by a certificate of the experts, or by the capitalization at the rate commonly used in each place.

ART. 202. The title deeds to be presented by the father, the mother, or the ascendant to prove the ownership of the property which they may offer to mortgage shall be at least those of their last acquisition, with a certificate of the Register from which the ownership of said property and the incumbrances thereon appear.

When the value thereof does not appear from the documents indicated, others constituting prima facie evidence shall be presented which prove said value.

ART. 203. The period of ninety days shall be computed for the presentation of the proceedings referred to in Article 191 of the law, from the time the property was set apart; when the property set apart does not exist at the time of the celebration of the second marriage, or, if it is acquired subsequently, in the case mentioned in Article 980 of the Civil Code, said period shall be computed from the date of its acquisition.

The proceedings referred to in Article 190 of the law, in the case of Article 199, shall be instituted within the ninety days following the date of the acceptance of the inheritance by the person obligated to set apart the property. After this period has elapsed, the institution of said proceedings may be requested by the persons interested, if they are of age, or otherwise by their legal representatives.

ART. 204. After the instrument creating the mortgage has been issued and approved by the Judge, two certified copies thereof and of the decree of approval shall be given the father, mother, or ascendant, so that, both copies being presented in the Registry, the proper records may be made in accordance therewith, one being filed in the Registry and the other returned to the inferior Court with the memorandum of record. If the father, mother, or ascendant refuses to receive said copies or to present them in the Registry, the Judge shall send them officially, ordering that the records be made in virtue thereof.

The Judge shall proceed in the same manner if, thirty days having elapsed from the time said copies have been delivered, the father, the mother or the ascendant does not return one of them to the inferior Court with the memorandum signed by the Register, stating that the mortgage has been recorded.

ART. 205. To enter in the Registry of property that estates have been set apart, a note shall be made at the margin of the proper record of ownership in the following terms:

The estate of this number ——, record number ——, is reserved in favor of Mr. A. and Miss B., children of Mr. and Mrs. D., according to the proceedings instituted in the inferior Court of ———, to determine and secure the property set apart for said children, in which proceedings a decree was issued, creating the mortgage and approved by the Judge, and its copy was presented in this Registry on such a day and hour, according to record number ——, folio ——, volume —— of the Day-book, which I return with the memorandum, stating that it has been recorded. (Date and signature.)

That property has been set apart as referred to in Article 199 of the law shall be stated by means of a similar marginal note, substituting the statement regarding the relationship by the proper one.

ART. 206. The decree creating the mortgage for the security of property set apart shall contain the details required for voluntary mortgages and also the following:

First. The date on which the father or the mother who created said mortgage have contracted a new marriage, or that of the birth of the illegitimate child referred to in Article 980 of the Civil Code; and in a proper case, that of the acceptance of the property by the ascendant.

Second. The name and surname of the deceased spouse, or that of the descendant, in a proper case, and the date of his or her death.

Third. The names and the age of each one of the children or relatives who have a right to have property set apart.

Fourth. The instrument on which said right is based.

Fifth. A statement of the property to be set apart and the value thereof.

Sixth. A statement that the proceedings prescribed by Article 190 of the law have been instituted, and at whose instance, or by Article 165, if the child himself or relative shall have demanded the mortgage.

Seventh. If the Judge has admitted the mortgage but declared its insufficiency, this fact shall be stated, and that the father, the mother, or the ascendant is obligated to mortgage the first realty or property rights he or she may acquire.

The entry of the decree shall be made, with regard to the property reserved, in accordance with the provisions contained in Article 205, and with regard to that mortgaged by the father, the mother, or the ascendant, with the details which a voluntary mortgage must contain and those stated in this article, and a brief statement of the deciding clause of the decree which may have been issued approving the decision, that the latter has been presented to the Registry and is returned with a memorandum of the records which have been made by virtue thereof.

MORTGAGES FOR SECURING THE PROPERTY OF THOSE WHO ARE STILL UNDER PARENTAL AUTHORITY.

ART. 207. The persons who record property belonging to a child of their family, shall state this fact in the same record, and how said property has been acquired.

When this statement is omitted in the record, the persons who have a right, according to the law, to require the father or the mother to create a mortgage for the security of said property, must demand that it be entered by means of a marginal note opposite the record.

ART. 208. A mortgage record shall contain all the details required for a voluntary mortgage, and, besides, the following:

First. The age and status (whether married or single) of the child.

Second. How the property was acquired.

Third. The description of the same and its value, or the value given it for the creation of the mortgage, in the terms fixed in Article 252 of these Regulations.

Fourth. A statement to the effect that said mortgage has been voluntarily created by the father or the mother, or that it has been created by virtue of a decree and judicial proceedings, and at whose instance.

Fifth. The details of number 7 and following paragraph of those embraced in Article 206.

ART. 209. The judicial authority required by the father or mother to convey or encumber the property of the child shall also be necessary to record the instruments or contracts the purpose of which is to extinguish property rights on the estates of said children, such as assignment, renunciation, subrogation, cancellation, redemption, and rights of a similar character.

ART. 210. Notice of the judicial authority given in accordance with the preceding article and of Article 205 of the law shall be communi-

cated to the persons designated in Article 204, and for the purpose mentioned in Article 201.

MORTGAGES BY REASON OF GUARDIANSHIP.

ART. 211. After the amount of the bond of the guardian has been fixed by the family council, and the estates offered in mortgage are considered sufficient by it, the mortgage shall be created by means of the proper public instrument.

ART. 212. The instrument creating the mortgage shall state the following, besides the details required for voluntary mortgages:

First. The name of the guardian and that of the person who may have appointed him.

Second. The character of the guardianship.

Third. The kind of document by virtue of which the appointment was made, and its date.

Fourth. The fact that there has been no remission of bond, or that, notwithstanding its remission, the family council has considered a bond necessary.

Fifth. The amount of the principal, income, and profits of the orphan or incapacitated person, separating the part consisting of real estate from other property.

Sixth. The amount of the bond which may have been required.

Seventh. A report of the estates offered as security, with a statement of the value and incumbrances of each, and of the deed of its last acquisition, and everything referring to deeds of ownership and certificate of the Register and appraisements which may have been presented.

Eighth. Creation of the mortgage for the amount fixed for the bond.

Ninth. A statement of the amount for which each estate is mortgaged, according to the division which may have been made.

Tenth. A copy of the agreement of the family council approving the bond.

The mortgage record shall be made in accordance with the provisions contained in these Regulations and shall also contain the details mentioned in this article.

ART. 213. If the orphan or incapacitated person possesses real estate, the family council, at the time of approving the mortgage for the other property, shall order that, opposite the records of the property or rights of the orphan or incapacitated person, a marginal note shall be placed, in the following terms:

The estate of this number ——, record number ——, is administered by A as guardian of B, appointed by C, in such manner, said B being a minor or incapacitated to administer his property; and this note is made by virtue of an agreement of the family council ——— of such date. (Date and surname).

The agreement of the family council must appear in a notarial instrument, which shall be forwarded in duplicate to the Register by the President of said council. One of the copies shall be returned by the Register with the memorandum of compliance.

If the minor or incapacitated person possesses property or property rights which are not recorded, the family council shall order their record, at the margin of which the note referred to shall be made.

ART. 214. The marginal note treated of in the preceding article shall be ordered made by the family council, even in case the guardianship is exercised without any bond having been required.

OTHER LEGAL MORTGAGES.

ART. 215. For the creation and record of the legal mortgages treated of in Articles 217 to 221 of the law, besides the requirements prescribed therein, those established by these regulations in the present title shall be taken into consideration.

TITLE VI.

MANNER OF KEEPING REGISTRIES.

ART. 216. In the office of each Registry a frame shall be constantly exhibited to the public, in which, with the necessary clearness, the following shall be stated:

First. The dates on which the old and the new Registries were established.

Second. The names of the municipalities embraced in the jurisdiction of the Registry and of the population of each one, stating whether any has changed its name; or, if it is known by more than one, all those it bears or has borne since the establishment of the Registry.

Third. A statement of the Registry to whose jurisdiction the towns may have previously belonged, stating the date on which they were annexed to the Registry under whose jurisdiction they have finally come.

Fourth. The names of the towns which did belong to the Registry and have been removed therefrom, with a statement of the date and of the Registry to which they have been transferred.

Fifth. The schedule of fees.

Also a notice to the public shall be placed in the same frame, stating that interested persons who present documents in the Registry may demand that the entry of presentation be made *at once*, and that the record be made *within the following fifteen days*, in the manner prescribed by Article 56 of these regulations, otherwise an action against the Register being admissible.

ART. 217. The books of the Registry shall be formed, arranged, and ruled in accordance with the models which the Registry and Notarial Division shall establish when their provision is arranged for. Each register shall request of the President of the proper Audiencia the books he may require, and after they have been procured he shall present them to the Delegate, who must rubricate them.

The President shall request the books of the Division. The latter shall keep an account of the books sent him, the former also keeping an account of those distributed to the Registers of his jurisdiction.

ART. 218. The Delegate shall rubricate the first and the last page of the Day Books and Registries of property.

In addition all the pages of said books shall be stamped with the seal of the inferior Court.

For the purposes of the preceding paragraph Registers shall forward the blank books to the proper Delegates, and, after receiving a notice from the latter, they shall appear in their office to receive them rubricated, stamped, and certified; after examining them the memorandum of conformity prescribed in Article 221 shall be made.

ART. 219. The books of the Registry must be bound in such manner that no sheet can be removed therefrom without leaving signs of its removal, and also so that they can not be rebound without its being known.

If, on account of the destruction or wear of the binding of some book, it becomes necessary to renew it, Registers may only do so after receiving authority from the President of the Audiencia and only in the manner and form he may determine.

ART. 220. The paper to be used in the books of the Registry shall be specially manufactured for this purpose, with the marks and countersigns which may be ordered by the Registry and Notarial Division.

ART. 221. On the first blank page of each book the Delegate who rubricates it shall enter a certificate, stating in words the number of folios it contains, the fact that none of them is stained, written on, or useless, and the date of its delivery.

At the foot of this certificate the Register shall make and sign a memorandum stating that he has received the book in the manner stated in said certificate.

ART. 222. In each Registry of property a book shall be opened for each municipality or municipal district, as prescribed in Article 230 of the law.

When, at the instance of a Register, and for reasons of public convenience, the division of a municipal district into two or more sections is ordered, in accordance with the provisions contained in Article 232 of the law, the proper proceedings must previously be instituted, in which the President of the proper Audiencia shall take part.

The proper order of numeration of the estates prescribed in Article 8 of the law, and the strict order of dates to which reference is made in Article 59 of these Regulations, shall be construed as embracing estates situated in each municipal district.

The books shall bear the numeration prescribed by Article 226 of the law.

Besides these books and the Day Book, Registers shall keep such other books as they may deem convenient for the service, which shall

only have an auxiliary character. They shall only be admissible as private documents, and shall be kept at the expense and according to the good judgment of the Register.

ART. 223. The official books shall be the Day Book of operations and those of the Registry.

The Day Book shall bear the following inscription on the title-page:

Day Book of operations of the Registry of property of ———, volume ——, begun on —— day of ———, in the year ———.

On the page following the title-page the certificate and matters provided for in Article 221 shall be entered.

Each folio of the Day Book shall contain a blank margin sufficiently wide to make the proper marginal note therein, and the rest of the page shall contain horizontal lines for the purpose of writing thereon precisely the numbers of the records, forming a vertical column, and the records themselves immediately thereafter. Between the records no more space shall be left than is necessary for the signature of the Register.

If any marginal note can not be made in the Day Book because the margin of the corresponding record is already filled, the latter shall be reproduced so that said note may be made.

The books of the Registry shall bear their title on the cover in the following manner:

Registry of property of ———, Audiencia of ———, volume ——, of the municipality of ———, volume —— of the Archives of this Registry of property.

The first page after the title shall be exclusively used for the certificate and memoranda prescribed in Article 221.

ART. 224. Registers shall keep a Day Book of receipts, in which they shall enter in strict chronological order all the fees they may collect for any of the purposes mentioned in the schedule annexed to the Mortgage Law, or in these Regulations or other special measures which may be enacted, stating the amount received, the reason thereof, the individual or corporation who or which is to pay the same, and the number of the entry of presentation of the instrument, should there be any; and in case the fees arise through any of the judicial mandates referred to in Article 340 of the law mentioned, this fact shall be stated, with the date of the mandate, the inferior or superior Court which issued it, and the question in which it was ordered.

ART. 225. Registers shall also keep a book called "*Of incapacitated persons*," in which they shall enter records relating to final decrees declaring the legal incapacity to administer or the presumption of death of absent persons, of those imposing interdictions, or declaring some person insolvent or bankrupt, or making any other declaration by which the civil capacity of persons is modified with regard to the free disposition of their property.

ART. 226. Said book shall be kept on stamped official paper, all of its pages stamped and rubricated by the proper Judge, who shall cer-

tify on the first page thereof as to the number of folios it contains. These shall be arranged in strict alphabetical order, assigning to each letter such number of folios as may be considered proper.

ART. 227. After the judicial mandate containing the final decree mentioned in Article 225 has been presented, Registers, after making the proper records in the books of the Registry of property, shall enter in the book above mentioned the names of the persons incapacitated to dispose of their property, with a brief extract of said document and a citation of the package in which it is to be kept. These records shall be made under the letter corresponding to the surname of the person interested, and shall receive a special correlative numeration under each letter.

ART. 228. After the records and entries treated of in the preceding article have been made, the Register shall make a memorandum at the foot of the mandate, stating this fact, if the person against whom it has been issued should possess property; or that it has not been recorded nor a cautionary notice thereof made, because he does not possess any; the proper record of the property he may subsequently acquire having been made in the book of incapacitated persons, citing the letter and number which said record bears.

ART. 229. At the margin of the entry of presentation of the mandate the Register shall make a note similar to the one mentioned in the preceding article.

ART. 230. The Register shall return the duplicate of the mandate or sentence, containing a memorandum that it has been complied with, to the proper superior Court, keeping the other duplicate in the files of of his Registry, in the proper package.

ART. 231. If the person who has been declared incapacitated to administer his property or to dispose of it by virtue of some final decree, which has been entered in the book of incapacitated persons, acquires any real estate or property rights, the Register, immediately after the record stating the acquisition thereof, shall copy the sentence or mandate of the Court, referring to the duplicate on file in his office.

ART. 232. Registers shall keep two indices in the same manner, in which they shall enter records of all kinds that they may make in the books of the Registry from the date the Mortgage Law went into operation; one of them shall be called *index of property* and the other *index of persons.*

ART. 233. These indices shall be kept by municipalities, and in alphabetical order, in books or pamphlets made of common paper, its pages folioed and stamped with the stamp of the Registry.

ART. 234. The index of property shall be divided into two sections, including in one of them all that relates to rural property, and in the other all that relates to town property.

ART. 235. In the section relating to rural property the Register shall state in the proper columns—

First. The name of the estate, and in its absence that of the locality or district in which it is situated.

Second. The village, place, hamlet, parish, quarter, or jurisdiction to which it pertains.

Third. The agricultural use to which the estate is put.

Fourth. Two opposite boundaries, selected from the four cardinal points, which must be the same for all estates.

Fifth. The number of the estate according to the Registry, and the book and folio containing the record.

ART. 236. The section of town property shall contain in its proper columns—

First. The name of the square or street on which the property is situated.

Second. The present number of the same, and the old one, also, if it appears.

Third. The number given it in the Registry, or the letter, if a cautionary notice is treated of.

Fourth. The volume and folio in which it is recorded.

ART. 237. In both sections there shall be a column in which to state the class of ownership or property right referred to in the record, such as *property*, *servitude*, *mortgage*, *annuity* (*censo*), *use*, or the modifications thereof caused by cautionary notices, such as *judicial attachment*, *incapacity to administer*, *etc.*

ART. 238. The index of persons shall embrace in the proper columns—

First. The name of the person in whose favor or against whom the ownership or property right in an estate is recorded or a cautionary notice thereof made.

Second. The volume and folio containing the records or notices in which the owner of any estate or property right is interested; and,

Third. All cancellations of records, notices, and marginal notes mentioned in the preceding column, citing the volume and folio of the former, as well as of the latter.

ART. 239. Should the Register observe any change in the name, bounds, or other important details of the estate, he shall make the proper correction in the indices.

The conversion of cautionary notices into records shall be stated in the proper columns.

ART. 240. In accordance with the provisions of the law and these Regulations, Registers shall arrange by months, quarters, half-years, or by years, according to the circumstances, four classes of packages—one for receipts, another for judicial mandates, another for public documents, and another for private documents.

ART. 241. The packages of each class shall be numbered separately and in their proper order, in the order in which they are made up. Documents shall be placed therein according to their dates.

ART. 242. After the period which each package must embrace, according to the division adopted, has elapsed, it shall be inclosed in a wrapper, the class of documents it contains and the period it embraces being written thereon, inclosing within the same wrappers an index rubricated by the Register, stating the date of each one of said documents.

ART. 243. In each Registry there shall be made by the Register a detailed inventory of all the books and packages contained therein.

Whenever a new Register is appointed, he shall take charge of the Registry in accordance with said inventory, signing it at the time of the delivery, his predecessor being responsible for what should appear contained in the inventory and not delivered.

At the beginning of each year the inventory shall be brought up to date.

ART. 244. No instrument creating any of the property rights mentioned in number 2 of Article 2 of the law can be recorded unless the ownership of the real estate is recorded in favor of the person creating said right.

When the right to be recorded is that of direct ownership, the right of the person having the ownership in the estate must be previously entered.

ART. 245. When the first entry requested is one transferring a property right to some estate, the ownership of which is not recorded in the old Registry, and the acquisition of the ownership of the estate and of the property right is proven by the title deed presented, or by documents which are prima facie evidence, dated before the day on which the Mortgage Law went into operation, two records shall be made.

The record of the ownership shall be made in accordance with the general rules, and that of the property right in the manner proper for its kind, but without again describing the estate, and only referring to the record thereof.

ART. 246. Cautionary notices and their cancellations relating to each estate shall be marked at the margin with letters instead of numbers, in strict alphabetical order.

If the notices and cancellations referring to any estate reach such a number that the letters of the alphabet are exhausted, they shall be duplicated from the beginning, this system being observed throughout. In the margin of the Registry destined to the numeration of records only "notice or cancellation" letter ——— (the proper one) shall be written.

ART. 247. When the first entry relating to an estate is a cautionary notice, the provisions of Article 245 and 450 of these Regulations shall be observed, as the case may require.

ART. 248. Each folio of the books of the Registry shall contain a sufficient number of horizontal and perpendicular lines, for the purpose

of writing thereon, and in no other manner, at the head: The number of the estate; then leaving a blank margin without lines and forming a vertical column, the numbers of the record or the letters of the cautionary notices, and immediately thereafter the entries of either one or of the cancellations. The blank margin shall have the width necessary to make the marginal notes therein, so that the latter shall not occupy more space than the records they refer to whenever this is possible.

ART. 249. In the books of the Registry all the entries, records, cancellations, and notes mentioned in Article 227 of the law shall be made.

ART. 250. Registers, taking into consideration the movement of real estate in their respective subdistricts, shall assign to each estate the number of pages they may consider necessary, placing at the head of each one the number of the estate, when they begin to record them.

ART. 251. After the pages assigned to an estate have been filled, the number of the latter shall be transferred to another folio of the same book, or of a following one if there is no place in the former for the record. In such case, besides the number of the estate which shall be repeated, there shall be written *duplicate*, *triplicate*, and so on, and a reference to the folios and volumes in which the previous records may be found, in the following manner: "See folio from —— to ——, volumes ——." On the last of said folios, and in addition to the number of the estate, which is at the head thereof, shall be written "Continued in folio ——." The number and the word *duplicated*, or *triplicated*, shall be written immediately after the printed words *estate number*, and the reference to the folios and volumes in the following space on the thick line at the head of each page of the books of the Registry.

ART. 252. When several estates are alienated or encumbered in one instrument, the proper record shall be made on the page assigned to each estate, stating in each record the other estates embraced in the instrument and the book, and the folio and number borne by the records referring thereto.

The statement which, according to the preceding paragraph, must be made in each record of the estates embraced in the same instrument, shall be made by means of a marginal note, besides stating in the body of each one of the records and before the words "*All that is stated appears, etc.*," that this estate is embraced in the same instrument (and if there are two or three, the number there may be), and that they are recorded in the book, the folio and number being stated in the marginal note of the said record.

Should they exceed three, the marginal note shall contain the following:

The other (stating the number there may be) estates embraced in the same instrument, by virtue of which this record has been made, are recorded in the volumes, folios, and numbers which are stated in the marginal notes of entry of presentation number ——, folio ——, volume —— of the Day Book.

ART. 253. The brief records which must be made in compliance with the provisions of Article 234 of the law shall only contain the following details:

First. The character and name of the estate, if it is stated, or, in a proper case, that of the property right.

Second. A statement of the incumbrances.

Third. The name, surname, and residence of the grantor and of the grantee of the estate or property right; the nature of the instrument or contract; the date and town in which the instrument was executed or issued, and the name of the Notary certifying to it, or of the authority or official who issued it.

Fourth. A reference to the full record, referring to the book and folio containing it.

Fifth. A statement to the effect that the fees have been paid the State, if any are due on the instrument or record, or that none are due.

Sixth. Date, surname, and fees.

Seventh. A note shall be made in the margin, in the manner prescribed by Article 252 of these Regulations.

ART. 254. When the instrument is not one transferring ownership and refers to more than one estate, the ownership shall first be recorded, and afterwards a full record shall be made of the estate having the highest value only, or of any of them, if they are equal in value; all other records shall be made in accordance with the rules of the preceding article.

Registers shall strictly observe the rules prescribed in the preceding articles for making full or brief records, as may be proper, whenever the record or entry of two or more estates or rights is requested by virtue of a single instrument.

When the first entry requested relating to an estate or property right is a cancellation, article 455 of these Regulations shall be observed.

ART. 255. All amounts and numbers mentioned in records, cautionary notices, cancellations, and entries of presentation, shall be written out in full.

ART. 256. Whenever several estates or property rights are mortgaged in one instrument, a full record shall only be made in the special Registry of the estate which bears the greatest incumbrance according to the instrument, or of any of them if they are equally encumbered.

Other records shall be made with the conciseness required by Article 234 of the law, stating the special details for this purpose required by Article 253 of these Regulations.

When, through the fault or negligence of the Register, some real estate has been mortgaged by a person not having a right to create the mortgage, or without sufficient authority to do so, even when the contract has been subsequently ratified by a person legally capable, the record for this reason shall be null, and it shall be officially canceled, no fees being required, without prejudice to the liability of the Register.

ART. 257. When the instrument by virtue of which a cancellation is requested embraces several property rights or estates, situated within the jurisdiction of the Registry, it shall be recorded by making the proper entry, with the details required by Article 157, in the Registry of the estate in which the full entry of the ownership or property right which is to be canceled had been made.

To make the cancellation appear in the other estates embraced in the same instrument, the Register shall make the marginal note required by Article 158, also making a brief reference to the kind and date of the document, the names of the parties thereto, and of the authority or Notary who issued it.

ART. 258. The Registry shall be open for six hours on all working days, the office hours being previously fixed by the Register with the approval of the Delegate, and being announced in the Gazette of the proper island, in the official newspaper of the province, if there be any, and by means of posters fixed on the door of the office of the Registry.

The days which are holidays for inferior and superior courts shall be considered as such for the Registries.

ART. 259. Registers shall not admit any document for record in the Registry, nor shall they make any entry of presentation, except during the six hours fixed in the preceding article; but at other times they may perform any other duties proper to their office.

ART. 260. When the hour for the closing of the Registry has arrived, the Register shall, on the line immediately following the signature of the last entry in the Day Book, make the closing memorandum required by Article 242 of the law, in the following terms:

It being (here the time) p. m., which is the hour fixed for closing, the Day Book is closed with (so many) entries made this day, embracing those numbered —— to —— (or), no entries having been made this day. (Date and signature of the Register.)

ART. 261. All instruments which are presented in the Registry for the request of any record or entry whatsoever, shall be entered in the Day Book.

ART. 262. In no case whatsoever shall the provisions prescribed in the preceding article be violated, even when it is seen that the instrument presented lacks some legal requisite.

When two contradictory instruments are presented at the same time, relating to the same estate, two entries shall be made in the Day Book, one after the other, numbered in their proper order, stating in each one that another relating to the same estate was presented at the same time, and stating the number which has been or is to be given to the same.

If neither of the respective instruments should contain a defect preventing the compliance with the request, the proper entry of each one shall be made, stating that this has been done because another instrument relating to the same estate having been presented at the same

time, it is not possible to make the record, or, in a proper case, to enter the notice, until the persons interested or the Courts decide which record is to have preference.

In the margin of the proper records and at the foot of the documents a memorandum shall be made stating what has been done.

The documents shall be returned to the persons or the official from whom they were received, so that the former may make use of his right, if he should wish to do so, and the latter, in a proper case, may issue the decree he may consider advisable.

The entry made shall lapse at the end of the period fixed in Article 96 of the law, if within said period the interested persons do not prove by means of a written petition, ratified before the Register, that they have agreed to allow one of the entries to have the preference, or that no judicial proceedings will be instituted to obtain a declaration of preference. Should they come to an agreement, the Register shall consider the statement made by the interested persons and shall file the petition in the proper package. If, on the contrary, a suit is instituted, the claimant shall request that a cautionary notice be made of the claim, and after the necessary mandate has been issued by the Register, the latter shall enter the notice, making at the margin of the one previously entered a note of reference, drafted as follows:

A mandate for the cautionary notice of the claim instituted by ———, as appears from entry letter ——, folio ——, and book ——, having been presented this —— day, the adjoining entry continues effective until a final judgment shall have been rendered.

The final judgment rendered shall be recorded in the Registry, converting the one which had been previously made, according to its terms, into a definite record or cautionary notice.

ART. 263. The entries of presentation referred to in Article 261 shall be made immediately on the presentation of the instruments, it not being permissible to postpone them to the following day, even when the parties interested consent thereto.

ART. 264. Neither shall the recording of said entry be interrupted after it has been once begun, even if other instruments are presented for record during this time, except to make a memorandum of the time they are presented.

Records already commenced must be finished even if the hour for closing has arrived.

ART. 265. Only one entry of presentation shall be made of each instrument, notwithstanding that several records must afterwards be made by virtue of said instrument.

Neither shall more than one entry of presentation be made when several instruments are presented to make up a single record.

ART. 266. Registers shall state, under their responsibility in the entry of presentation, the details mentioned in Article 240 of the law, and they may add, whenever they consider it advisable, any other

details which will assist in distinguishing the instruments presented from any similar ones the record of which is also demanded.

ART. 267. To state in the entry of presentation the details required by Article 240 of the law, the rules prescribed for records shall be observed, in so far as they are applicable.

The situation of the estate shall be stated, if it is rural, by the district, subdistrict, or place in which it is situated, and if it is town property, by the name of the town, that of the street, square, or ward, and its number, should it have any.

Along the side of the signature of the Register, the person presenting the instrument shall affix his own, no matter what kind of instrument it is, and if he fails to do so, a witness shall sign. For this purpose, when the record is requested by authorities who do not reside where the Registry is situated, they shall forward the instruments to any of their subalterns who reside in that place, and in their absence, to the representative of the Department of Public Prosecution, so that the latter may present the instrument.

ART. 268. After the proper record has been made in the book of the Registry, a memorandum in the following terms shall be made at the margin of the entry of presentation:

The record (cautionary notice or cancellation) referred to in the adjoining record in volume —— of the municipality ——, folio ——, estate number ——, record number ——, has been made. (Date and surname of the Register.)

ART. 269. After the entry of presentation has been made, the Register shall deliver to the person who presented the instrument a reciept for the same, should he request one, in which he shall state the kind of instrument presented, the date and hour of its presentation, the volume and folio containing the record, and the number of the latter.

The Register, in returning the instrument after the entry has been made, shall take up the receipt he may have given therefor, and in its absence he may request that one be given him for the return of said document.

ART. 270. In order that the officials, clerks, and assistants of the Registry may sign the entries of presentation in the capacity of witnesses, the Register must state, under his responsibility, that at the time of making them it was not easy to find other persons in the town who might sign as witnesses.

ART. 271. Whenever a Register suspends the record or entry of some instrument, or the cancellation thereof, he shall return it to the person presenting it, but making a memorandum thereon stating—

The record of this document has been suspended (briefly stating the reason for the suspension), as appears from the cautionary notice of such date contained in volume —— of the Registry, folio ——. (Date and signature of the Register.)

ART. 272. The memorandum which, in accordance with Article 244 and the second paragraph of Article 249 of the law, the Register must affix at the foot of instruments, shall be drawn in the following terms, according to what has been done by virtue thereof in the Registry.

If it has been recorded:

The foregoing document has been recorded at folio —— of volume —— of the municipality of ———, estate number ——, record number ——. (Date, signature, and fees.)

If a cautionary notice has been requested and made:

A cautionary notice has been made of the foregoing document at folio ——, volume —— of the municipality of ———, estate number ——, record number ——. (Date, signature, and fees.)

If a record has been requested and on account of some error contained in the instrument a notice has been entered at the request of the party interested:

The record of the foregoing document has been suspended on account of the following defect ——— (or defects), and in the meantime a cautionary notice has been made at folio —— of volume —— of the municipality of ———, estate number ——, notice letter ——. (Date, signature, and fees.)

If a cautionary notice ordered by a judicial mandate can not be made for good reasons, and in place thereof a memorandum of suspension has been made:

The cautionary notice ordered in the preceding mandate has been suspended, because it contains the defect ——— (or defects), and a memorandum of suspension has been made in place thereof at folio —— of volume —— of the municipality of ———, estate number ——, note letter ——. (Date, signature, and fees.)

If the entry which has been made is a cancellation:

The cancellation in accordance with the foregoing document has been made at folio —— of volume —— of the Registry of the municipality of ———, estate number ——, record of cancellation number ——. (Date, signature, and fees.)

When there is not sufficient space in the instrument presented to make the memorandum, the Register shall begin it at the foot of the document with the words or syllables possible, continuing on a separate sheet, which must be furnished by the interested persons.

ART. 273. If the entry or record of several estates or rights has been made, all of which are contained in one instrument, the memorandum made at the foot thereof shall state precisely and laconically what has been done, noting also at the margin of the description of the instrument of each estate or right, its number, folio, book, and number of the record or letter of the entry which has been made regarding the same, without collecting any fees for these statements.

ART. 274. The Register, after having made in the Day Book the proper entry of presentation of an instrument which is to be returned for the correction of some error, according to Article 17 of the law, shall make the following rubricated memorandum at the foot thereof:

Presented (on such a day), Day Book number ——.

If the thirty days referred to in Articles 17 and 19 of said law have elapsed without the instrument having been taken up, the memorandum shall be made in the following manner:

The record of the above instrument has not been made, on account of the following error ——— (or errors) therein, and thirty working days having elapsed without its having been corrected. (Date, signature, and fees.)

ART. 275. No record or entry shall be made unless the payment of the taxes on property rights or on the alienation of the property is proven, if any arise out of the instrument or contract, or the note of exemption stamped by the liquidating office appears thereon.

The payment of the tax referred to shall be made through the branches of the Public Treasury or through the Register of property himself, should he have been delegated for this purpose by the proper competent authority.

The offices of the Treasury shall issue, besides the proper receipt, a certificate on stamped official paper, stating the sum received and all its details.

In case records of a single document are to be made in more than one Registry, such a number of certificates shall be issued as there are Registries in which it is to be recorded.

The interested parties shall present with the receipt the proper copy of the certificate of the sum paid, on which the Register shall make a memorandum with regard to having verified it and found it correct.

If the record is to be made in one Registry only, the Register shall keep the receipt, making a memorandum of this fact on the certificate presented to the party interested; and when the document is to be recorded in several Registries, each Register shall file the copy of the certificate presented to him, with a memorandum stating that the receipt is in the possession of the party interested, the latter being taken up in the last Registry in which the record is to be made, and a new memorandum made on the certificate remaining in the possession of the interested party that the receipt has been filed.

ART. 276. The receipts, or, in a proper case, the certificates referred to in the preceding article, shall be filed in order of their dates, in numbered packages, after having stated on each one the volume and folio in which the respective record can be found, its number, and that of the estate to which it refers.

ART. 277. The entries or memoranda which are to be made in the books of the Registry of property, by virtue of the documents referred to in Article 80 of these Regulations, can not be certified to by the signatures of the Registers.

This shall be done by the representative of the Department of Public Prosecution, under his responsibility, or, in his absence, by a lawyer of the subdistrict who has attained his majority, who shall receive the proper fees therefor in accordance with the Schedule.

ART. 278. In case a Registry does not possess books in which to make records, or does not possess a Day Book, notwithstanding that they have been requested of the President of the Audiencia in ample time, the proper provisional books shall be opened in said Registry, formed by one or several quires of full sheets of paper, and the number of pages which may be considered necessary by the Register.

ART. 279. The books which it may be necessary to open, in accordance with the provisions of the preceding article, shall be folioed; on

their pages the margins necessary for any proper memoranda shall be left; they shall be stamped with the stamp of the Registry, and rubricated by the Register and the Judge of First Instance, who shall also sign the first page with their full signature, on which, as a heading, reference shall be made to said Article 278.

ART. 280. In these provisional books, such entries of presentation, notices, and marginal notes shall be made as may be proper by virtue of the instruments presented, in the same manner in each way and every one of their parts, and with the same effect as if they had been made in the regular books; but in the provisional books of the Registry they shall follow each other in the strict order of their dates, without any pages or intervals being left between them.

ART. 281. Memoranda to the effect that a document has been presented, entered, or recorded, made at the foot of an instrument in accordance with the provisions contained in Article 244 of the law, and 271 and 274 of these Regulations, shall also be made in accordance with said provisions, without any other difference than the substitution for the volume and folio of the stub-book (regular book) of the folio and number of the provisional one.

ART. 282. The Register, immediately on receiving the proper stub-books, shall officially inform the Judge of First Instance of the sub-district thereof, so that on the following day, if it is a working day, the closing of all the provisional books may take place in the office of the Registry, after their examination by the Judge to assure himself as to their having been kept in accordance with the provisions contained in these Regulations; and, finding them correct, he shall make a memorandum at the end of each one, stating the number of records it contains, and that there are no blank spaces, corrections, erasures, nor interlineations therein, or stating those it does contain, this memorandum being signed by the Judge and by the Register. If the books are not in conformity with the provisions contained in the preceding articles, the closing memorandum shall be made notwithstanding this, but stating therein the defects they contain, the Judge communicating the same to the President of the Audiencia for the proper proceedings.

When the provisional books are Day Books, the Register, immediately on receiving the proper official books, shall begin to transfer the records contained in them to the new books, but without closing the former immediately, as they must continue open, and such entries made therein, until all of them having been transferred to the proper stub-books, the instruments presented for record or entry in the Registry may be continued therein.

ART. 283. After all the provisional books have been closed, all the records relating to instruments on file in the Registry or which are presented, shall be entered in the stub-books; but if said instruments refer to estates regarding which there is some entry in the provisional books, said record must first be transferred to the stub-books.

ART. 284. Registers can not issue any certificates referring to entries contained in the provisional books which have not been transferred to the stub books.

ART. 285. Said officials shall make the transfer of all the records contained in the provisional books to the stub books as quickly as possible, without neglecting current business.

ART. 286. When the transfer has been fully completed, the Register shall officially give notice thereof to the Judge of First Instance of the subdistrict, so that, on the day he may fix, the verification of the records transferred may take place in the office of the Registry; and if it appears that they have been faithfully and accurately transferred, this shall be stated by means of a memorandum made in each of the provisional books immediately after the closing memorandum, which shall be signed by the Judge and by the Register; and, after this has been done, said books shall be filed in the Registry and the Register shall communicate this fact to the President of the Audiencia, who shall communicate it in his turn to the Registry and Notarial Division of the Colonial Department.

ART. 287. In case any Register has been retired from office before having completed the transfer to the stub books of the records made in the provisional ones, he must defray any expenses that the person continuing the transfer may incur thereby. The heirs of a deceased Register shall, in a similar manner defray, in a proper case, the expenses incurred by the person making the transfer of said entries.

ART. 288. The parties interested shall, by common consent, fix the amount of said expenses, and should they not come to an agreement they shall submit their differences by way of administrative proceedings to the Judge of First Instance, who shall transmit them to the President of the Audiencia with his report, so that the latter may decide what he may consider just. This decision shall be carried out without prejudice to the right of the person who considers himself injured to institute judicial proceedings. These claims shall never be an obstacle in the way of the person in charge of the Registry from making the transfer of the records contained in the provisional books to the stub books.

ART. 289. When cases occur in which the provisions contained in Articles 278 and the following have to be applied, Registers may forward to the Registry and Notarial Division of the Colonial Department, through the President of the proper Audiencia, the information showing the cost and increase of work caused by this exceptional service, so as to embrace it in their reports for any purpose they may deem proper.

TITLE VII.

CORRECTION OF ENTRIES IN REGISTRIES.

ART. 290. Whenever a Register shall observe that some material error has been committed in any records or entries which he can himself correct, in accordance with Article 254 and the second paragraph of 256 of the law, he shall do so, making a new record at his own expense and under his responsibility in the same book and with the proper number.

This correction must be made, even when the record to be corrected has already been canceled.

When in making a record a word is incorrectly written, for example, Banga for Batangas, legatees for legatee, mortgagor for mortgage, etc., and it is observed at the time, it may be corrected at once without making a new record, in the following manner: I mean Batangas, I mean legatee, I mean mortgages, placing it in parentheses. With the exception of these cases and other analagous ones, the general rule shall be followed.

ART. 291. If the error has been committed in a record, cautionary notice, or cancellation, the correction shall be made in the following manner:

(In the margin:) Correction of record number —— (or) of the cautionary notice in favor of ——— letter —— (after the number corresponding to the record). The words (state here the words) of the record (or cancellation) number —— (or of the cautionary notice in favor of ——— letter ——) being incorrect (or omitted) and the instrument being on file in the Registry, I correct it in the following manner: (Here the corrected record, underlining the new or amended words which it contains.)

ART. 292. If the error has been committed in some entry of presentation or marginal note, the correction shall be made by means of a new entry in the margin of which, if it is possible, and otherwise, as closely thereto as practicable, the following words shall be written:

For the correction of the entry number ———.

Should the entry not have any number, the folio, the name of the person in whose favor it has been made, and the letter, should it bear any, shall be written in place thereof.

ART. 293. If the error committed is one which can not be corrected, without the formalities prescribed in Article 256 of the law, the Register shall, in writing, request the appearance of the person interested, who must have the instrument in his possession, so that, by exhibiting it and in his presence, the correction may be made.

ART. 294. Should the party interested not appear on the second invitation, or if he does appear he should oppose the correction, the Register shall apply by a communication to the Judge of the subdistrict, so that he may order it corrected; and the latter, hearing the party interested in the manner prescribed for the creation of legal

mortgages, or declaring him in contempt should he not appear, shall issue a decree refusing or ordering that the correction be made by virtue of the instrument in possession of the person interested and which has been presented, or ordering that a certified copy be officially made of the part of the instrument necessary to decide as to the correction, if said instrument is not presented.

The costs of the proceedings shall be defrayed by the Register, and those for the preparation of the certified copy by the person interested who has been declared in contempt.

ART. 295. When the Register does not know the residence of the person who has the instrument which is the subject of the incorrect record in his possession, he shall summon him three times at intervals of thirty days, through the official newspaper of the province. If said period has elapsed and he has not appeared, the Register shall apply to the Judge of the subdistrict, who shall proceed in the manner prescribed in the foregoing article.

ART. 296. In the case mentioned in the two foregoing articles the correction shall be made in the manner prescribed in Article 291, but suppressing the words "the instrument being on file in the Registry," and inserting in their place:

N., the person interested therein, having been summoned and having shown me the instrument, in conformity therewith, or, by virtue of a decree of ——, issued in ——, I correct said record, etc.

When the correction is made by virtue of the new certified copy of the instrument, mention thereof shall also be made.

The certified copy shall be filed in the proper package.

ART. 297. When the Register observes any error of judgment of those mentioned in No. 1 of Article 255 of the law, and if he believes that someone might suffer damage thereby if it is not corrected, he shall summon all the persons interested in the incorrect record for the purpose of informing them as to the error committed, and consulting their wishes as to the proper correction.

If all of them appear and unanimously agree to the correction, their agreement shall appear by a memorandum made by the Register, who shall sign it, together with the parties interested, and the proper record shall be made in virtue thereof. This memorandum shall be filed in the proper package of the Registry.

ART. 298. Any of the parties interested in a record, who may observe a material error or an error of judgment therein, may, with the consent of the others, request the register to correct it; and should the latter not consent thereto, or any of the interested parties oppose it, he may submit a similar petition to the Judge of the subdistrict, proceeding in such case in the manner prescribed in Article 294.

ART. 299. The Judge shall declare, and the Register shall recognize, if proper, the error of judgment only when there is no doubt as to its existence, in accordance with the rule established in Article 260 of the

law; and in this case the correction shall be made in virtue of a new record, in accordance with the original instrument.

ART. 300. When the error is caused through a vague and incorrect statement of a part of the instrument, which was construed by the Register in a manner differing from the understanding of the parties interested, the Judge of the subdistrict shall not declare said error, nor shall the Register correct it; but the right of the parties shall be reserved to have the interpretation of the contract judicially declared, or to make a new one in which the doubtful part shall be stated with greater clearness.

ART. 301. After the correction of a record, cautionary notice, or cancellation has been made, the entries referring thereto in the other books shall also be corrected if they are also incorrect.

This correction shall also be made by means of a new record in the manner prescribed in Article 292.

ART. 302. The correction of an error of judgment shall be made in the same manner as that of a material error, but citing, instead of the words which have been materially mistaken, the entire clause which is to be corrected. Thus, instead of "the incorrect words," shall be written: "The following phrase is incorrect," etc.

TITLE VIII.

ADMINISTRATION AND INSPECTION OF REGISTRIES.

ART. 303. The Registry and Notarial Division, established by Article 265 of the law, shall be divided into three Bureaus, to be called—the first, of Registries and Civil Marriages and Mercantile Registry; the second, Registry of Property and of Statistics; the third, the Notarial. Notwithstanding this division of bureaus, the Secretary may require of the Chief, or of the Bureaus of the Division, provisionally or permanently, any other services or labors for which it is advisable to use the services of their clerks. The Chief of the Division and the two officials thereof shall be in charge of the Bureaus, assisted by the necessary clerks and copyists.

The Chief of the Registry and Notarial Division shall submit to the decision of the Secretary all questions which require his approval, and shall himself issue the decisions which do not require it, in accordance with Article 268 of the law.

In case of absence, sickness, or for any other reason accidentally preventing the Chief of the Division from discharging his duties, he shall be substituted for all legal intents and purposes by the official thereof designated by the Secretary.

ART. 304. Presidents of Audiencias shall communicate directly with the Division and shall comply with the orders they may receive from the same in all that relates to the matters submitted to them.

ART. 305. The roll of the officials of the Division referred to in Article 266 of the law shall be annually published in the Gazette.

When to fill some vacancy in the position of copyist there are two receiving the same salary and of the same standing in the next lower class, their order on the list shall decide as to the preference.

The officials of the Division who are forced to leave their duties on account of the suppression of the positions they were filling shall receive the same places, should they be reestablished.

ART. 306. The office regulations shall determine the duties of the employees of the Division and all that is necessary for a prompt and accurate discharge of business.

ART. 307. To hold the competitive examinations for the positions of assistants of the Registry and Notarial Division of the Colonial Department in the case mentioned in Article 266 of the law, the following rules shall be observed, which shall be embraced in each call:

First. The examinations shall be advertised in the Gaceta de Madrid at the proper time.

Second. The applicants shall present their petitions to the Registry and Notarial Division of the Colonial Department within the period of sixty ordinary days, computed from the day following the publication of the announcement, accompanying thereto at the same time the document showing that they possess the qualifications required by Article 288 of the law, and that they are not embraced in any of the cases mentioned in Article 299 of the same.

Should the applicants not have the title of lawyers, they shall present a certificate of the Secretary of the University, stating that they possess the necessary qualifications to obtain said title, it being understood that they must have obtained the latter before being appointed.

In announcing each competitive examination, the Division shall state the documents necessary to prove the other details required by this rule. The applicants may also present all documents showing their merits, services, and circumstances.

On the day following the period mentioned, the Division shall transmit to the Gaceta de Madrid, for publication therein, a list or statement containing the names of all the applicants.

Third. The Chief of the Division shall declare all the applicants eligible to take part in the examination who may have fulfilled the requisites mentioned in the preceding rule, within the period of the call, and shall refuse the applications of all the rest, and publish in the Gaceta a list of the persons admitted. Against this decision there shall be no remedy whatsoever.

Fourth. The Board of Examiners shall be composed of: The Chief of the Division, or the person discharging his duties, who shall be President of the same; an Associate Judge of the Audiencia of Madrid; two Professors of the law branch of the Central University; one lawyer of the Madrid bar; one Register of property of the first class;

and one official of the Division mentioned, who shall act as Secretary. The members of the Board shall be appointed by the Colonial Secretary for each examination held, said appointments being published in the Gaceta de Madrid.

The office of members of the Board in question is honorary and without pay.

Fifth. There shall be three public examinations—two theoretical and one practical.

Sixth. The first examination shall consist of answering twelve questions selected at random on the following subjects:

Two on Spanish Civil Law.

Two on the mortgage legislation for the Colonies.

Two on legislation regarding Registries and civil marriage in said provinces.

Two on notarial legislation of the same.

Two on general colonial legislation.

One on administrative law.

And one on commercial law.

Seventh. The second examination shall consist of writing an essay on a subject selected at random from among one hundred on the following matters: Spanish Civil Law; Mortgage legislation for the Colonies; legislation relating to Registries and civil marriage in said provinces; the Notarial legislation of the same; Administrative law; Commercial law, and general colonial legislation.

Eighth. The practical examination shall consist of preparing papers on mortgage legislation, Registry, or civil marriage or the Notarial law, and stating the proper proceedings. For this purpose the Division shall prepare twenty subjects relating to the same number of papers.

Ninth. Whenever a call for a competitive examination is published in the Gaceta de Madrid, a list of three hundred questions for the first examination shall be published immediately following it and the hundred subjects relating to the second.

Tenth. The Board shall announce in the Gaceta, and fifteen days in advance, the locality, days, and hours on which the examinations are to commence.

Eleventh. On the day fixed for the commencement of the examination, the Board shall publicly draw by lot to determine the order in which the applicants shall be called up for each examination.

If, after a competitor has been called, he does not appear at the hour fixed, his turn shall be taken by the one having the number immediately following, and the former shall receive a new number following the last number issued.

If, at the second call, he should not appear, he shall be considered as having abandoned the examination.

Twelfth. The competitor shall begin the first examination by draw-

ing by lot the twelve questions mentioned in rule No. 6, which he shall answer verbally, without ever being permitted to employ more than one hour and a half for this purpose.

Thirteenth. For the second examination, one of the competitors shall draw by lot the only theme which is to be the subject of the essay, which must be written in the own handwriting of the competitors within the period of twelve hours at the most, being constantly watched by a member or the Board, and being permitted to make use of books.

After the essay has been completed, they shall deliver it to the member of the Board present, who, in the presence of the competitors, shall inclose it in an envelope, sealing it with sealing wax, the person interested placing his signature thereon.

On the day fixed by the Board, the competitor who wrote the essay shall read it. Should any of them not be able to do so, he shall state the reasons preventing it to the Board, who shall decide as may be proper, according to the particular cases.

Fourteenth. The practical examination shall be held by the competitors on the subject which one of them has previously drawn by lot, proposing the proceedings to be taken thereon, and completing it within the period of eight hours, during which time they shall be watched in the manner prescribed in the preceding rule, but being permitted to use books.

After the paper has been concluded, they shall deliver it to the member of the Board present. On the day fixed by the Board this paper shall be read.

Fifteenth. The Board shall see that at least half of the questions to be included in the first examination are deposited each day in the box.

Sixteenth. The Board shall not give any advice nor ask any questions of the competitors concerning the subjects of the examinations, with the exception of the right of the President in the discharge of his duties.

Seventeenth. After each of the three examinations, the Board shall classify the competitors in secret session.

The competitor who shall not have passed any of the examinations can not take the following ones.

A list of the applicants who shall have passed each examination shall be exhibited in the building where they take place, consecutive decisions being announced in the same manner.

Eighteenth. At the conclusion of the three examinations, the Board shall prepare a list, in which all the competitors who shall have passed shall be placed in order of merit. This order shall be fixed by a special vote, held for each place, each voter depositing a slip of paper in a box, containing the name of the person who, in his judgment, in entitled to the number voted on.

Nineteenth. The votes shall always be secret.

The classification shall be decided by the majority of votes.

In case of a tie, the President shall cast the deciding vote.

Twentieth. The Board shall propose for the vacant places, which were announced to be open to competition, and for the places which are vacated before the conclusion of the exanination, those competitors who obtained the first numbers, so that the position of the highest class and salary shall be filled by No. 1, the following one by No. 2, and so on.

Twenty-first. The President shall submit to the Colonial Secretary the names of the persons proposed for each place, so that the appointment may be made.

Twenty-second. The Board can not act without the presence of at least five of its members. Judges who for any reason whatsoever have not taken part in the first examination of the contest, can not take part in the voting.

Twenty-third. The proper minute book, rubricated by the President and signed by the Secretary, shall be kept, who shall transmit it to the Registry and Notarial Division of the Colonial Department at the conclusion of the examinations.

ART. 308. Competitive examinations for the positions of copyists of the Registry and Notarial Division of the Colonial Department, in the case mentioned in Article 266 of the law, shall be subject to the following rules:

First. To take part in the competitive examinations it is necessary to be a Spaniard and a layman, over twenty years of age, and of good moral character.

Second. The applicants shall present their requests to the Registry and Notarial Division within the period of fifteen ordinary days, computed from the day following the publication of the announcement, transmitting at the same time a certified copy of the certificate of birth or, in a proper case, the certificate of baptism, and a certificate of status (whether married or single) and of good conduct, properly dated by the Mayor of the town of the domicile of the person interested. They may also present all documents showing their merits, services, and circumstances.

Third. The Board of Examination shall be composed of the Chief of the Registry and Notarial Division, or the person discharging the duties of that office as President, and two professors of penmanship in public educational institutions, whom the Secretary shall appoint for each examination, the one who has been appointed last discharging the duties of Secretary.

Fourth. There shall be two public examinations, one practical and one theoretical. The first examination shall consist of three subjects, namely, grammar, elementary arithmetic, and writing. The second examination shall consist in answering two questions selected by lot and referring to the geography of the Colonies.

Fifth. The subjects for the second examination shall be made public at the time of the call.

Sixth. For the first examination the Board shall require each competitor to read a paragraph of Spanish prose, which he shall analyze. At the conclusion of this part of the examination by all of the competitors, they shall simultaneously take part in the second and third parts of the examinations, some arithmetical problem being given by the Board for solution by the competitors, immediately thereafter requiring them to write from dictation in their ordinary handwriting, and to copy the draft which shall be given them, in Spanish writing, for half an hour, and in the different kinds of writing they may be acquainted with for another half hour. After this work has been signed it shall be delivered to the Board for their determination.

Seventh. The competitors shall draw by lot the two questions prescribed in rule number 4 for the second examination, which shall be answered orally.

Eighth. The Board shall not hold any sessions without the presence of two members. Any member who, for any cause whatsoever, has not taken part in the oral examination of any of the competitors, can not take part in the voting.

Ninth. The last paragraph of rule 2 of the preceding article, and rules 1, 3, 10, 11, 16, 17, 18, 19, 20, 21, and 23 of said article shall be applicable to these competitive examinations, and shall be published in each call, together with the provisions contained in this article.

Whenever a President of an Audiencia shall select from among several Judges or subdistricts or municipal Judges in accordance with Article 269 of the law, the person who is to be delegated to the inspection and surveillance of the Registry in a town where there is more than one Court of First Instance, or, in a proper case, more than one inferior municipal court, or must delegate an Associate Judge to make an extraordinary inspection within or outside of the jurisdiction of the Audiencia, he shall make the appointment in writing, communicating it to the Register and to the appointee. In the same manner, for the purpose of making an extraordinary inspection, the Judge of First Instance, or, failing him, the municipal Judge of the subdistrict in which the Registry is located, may be delegated.

ART. 310. For the inspection and visit of Registries, the President of the proper Audiencia shall communicate to the Delegates such instructions, in writing, as he may deem necessary, which must be strictly observed by them, they being responsible for any omission or error in their fulfillment.

ART. 311. The persons delegated for the inspection of a Registry shall make the quarterly inspection by going to the Register's office, accompanied by the Secretary of the proper inferior Court, but not during the hours fixed in each office for the public service. The Delegate shall examine all the books kept by the Register, the documents which are awaiting entry, and the condition of the files.

The reports of the quarterly inspection shall contain the following details:

First. The number of documents awaiting record on the day of the inspection.

Second. The number of the entries of presentation made during the quarter, and the dates of the memoranda written in the margin thereof.

Third. A statement that these are signed by the Register and by the person interested, and the number which are signed by the substitute, or which are not signed at all.

Fourth. Whether any words have been corrected, erased, or interlined in the books since the date of the last inspection.

Fifth. Any omission or lack of formality or superficial defect observed by the Delegate in the books, documents, or office of the Registry.

Sixth. In cases in which the Register, not having given any bond, is obliged to deposit a quarter of his fees, the report shall state whether that part of the fees collected from the date of the last inspection until five days before the present inspection has been deposited.

If, before the inspection is concluded, the time for opening the Registry arrives, the opening shall be deferred until the inspection has been concluded, provided it does not exceed two hours more; and after this time has elapsed without finishing the report, the inspection shall be deferred until the following day.

If the inspection is not made on the last day of the quarter because it is a holiday or for any other legitimate reason, the cause of the delay shall be stated in the report.

After the report has been made, it shall be signed by the Delegate, the Register, and the Secretary; the first writing with his own hand in the margin of the last entry contained in the Daybook, and in the books of the Registry, the date of the inspection and the word *Inspected*, writing his signature immediately thereafter.

He shall send a copy of the report of this inspection to the President of the Audiencia within three days.

ART. 312. Presidents of Audiencias shall make an extraordinary inspection, or order one to be made, in the following cases:

First. When it is so ordered by the Division.

Second. In the case mentioned in Article 359 of these Regulations.

Third. When the proceedings mentioned in Article 308 of the law are instituted.

When the reason for the inspection is that the Registry is vacant, it shall include the period during which it has been in charge of the last Register; but if a general extraordinary inspection was previously made, it shall only include the period which has elapsed since said inspection.

In ordering a special inspection to be made, it shall be stated whether it is to be general or special; stating in the first case what period it is to include, and in the second the books and documents which are to

be examined and it shall be communicated to the President of the Audiencia.

No matter who is the official who makes the inspection, he must be accompanied by a Secretary, to be appointed by the authority who ordered the inspection to be made.

ART. 313. After the Inspector has arrived in the town in which the Registry is situated, he shall advise the Register, so that the latter may be in his office on the day and hour fixed by the former for the beginning of the inspection, taking care that said inspection is made before or after office hours.

If the person in charge of the Registry should refuse to exhibit the books or should not be present during the hours fixed for the inspection, the Inspector shall make a memorandum of this fact and shall communicate it to the President of the Audiencia for the proper action.

When an inspection can not be concluded on the same day, the proper memorandum shall be made regarding what has been inspected, which shall be signed by the Inspector, the Register, and the Secretary.

ART. 314. No matter what informalities and defects may be observed by the Inspector, they shall be stated in the report without making any formal charges or remarks to the Register, but without prejudice to requiring the latter to make the necessary explanations to elucidate the facts reported.

ART. 315. If after the report of the inspection has been closed the Register disputes any of the statements made therein, he shall write his reasons with his own hand immediately following the report, signing at the foot.

ART. 316. All those who subscribe the report shall be responsible, in accordance with the laws, for the correctness of the statements made therein, of those affirmed, as well as of those denied.

ART. 317. The President of the Audiencia shall examine the report, and should he observe any difficulties or irregularities caused in some Registry by legislation in force, on account of the circumstances existing in different localities, he shall submit a detailed statement thereof to the Division, so that the latter may propose the proper amendments to the Government.

ART. 318. The Inspector shall make an inspection and an examination of the books of the Registry in accordance with the following rules:

First. He shall demand the report made of the last inspection, whether it was ordinary or extraordinary, and shall enter the order and decrees issued by virtue of said inspection, or the part thereof which has been complied with.

Second. He shall examine all the entries in the Day Book included in the period to be covered by the inspection; and without prejudice to entering in the report any defects and informalities he may observe, he must necessarily enter the dates of each one of the entries made during the past six months and those of the corresponding marginal notes.

Third. After the examination of the Day Book has been concluded he shall proceed with the examination of the records made by virtue of said entries of presentation in chronological order, and shall include in the report any omissions, defects, and irregularities he may observe in their external form, as well as in their matter, as prescribed by Article 345 of the law and 311 of these Regulations.

Fourth. Besides these details and those ordered in each case by the Division, the Inspector must include in the report the following facts:

1. Whether the book fulfills the conditions established by Title 6 of the law, and of these Regulations.

2. Whether the numeration of the estates is correlative for all those of one municipality or section; or if it is special for each volume of those composing a municipal district.

3. Whether the records and notices relating to one estate have a special numeration.

4. Whether there are any intervals or blank spaces in the records.

5. Whether in all records regarding instruments or contracts for which the tax on property rights or transfer of property is to be collected, the Register has stated the amount collected or that the tax was not collected.

6. Whether in all records where it is proper, the amount collected for fees is stated, or whether any records exist which do not contain said statement.

ART. 319. Besides the foregoing facts, one or more different entries referring to each one of the following kinds shall be copied in the report literally, with their corresponding marginal notes:

First. Transfer of ownership of several estates situated within one municipal district and included in one instrument.

Second. Award of estates to different persons *pro indiviso*.

Third. Entry of possession of an estate with the entry immediately following.

Fourth. Sale ordered by the State with the entry of possession which precedes it, and that of the mortgage which in a proper case follows it.

Fifth. Acquisition of property by virtue of a will.

Sixth. Acquisition of property *ab intestato*.

Seventh. Acquisition by virtue of specific legacies.

Eighth. Creation of voluntary mortgages on different estates.

Ninth. Creation of annuities (censos).

Tenth. Imposition of servitudes.

Eleventh. Cancellation of a voluntary mortgage.

Twelfth. Redemption of annuities granted by private parties.

Thirteenth. Cancellation of a legal mortgage by reason of guardianship.

Fourteenth. Notice on account of a lack of indices.

Fifteenth. Suspension of an entry of a writ of attachment.

Sixteenth. Cancellation of a property right recorded in the old Contaduría, Anotaduría, or Receptoría.

The Inspector shall see, in so far as is practicable, that the entries of which, according to the foregoing article, a literal copy is to be made, contain some special circumstance; and if in the period which the inspection is to cover, there should not be all the kinds of records enumerated in the foregoing paragraph, a special statement of those which do not exist shall be made in the report.

ART. 320. After the examination of the books of the Registry of property has been concluded, the Inspector shall request the Register to state whether he has any provisional books in his possession, stating in the report the answer of the latter, and in an affirmative case, the date of the closing memoranda and comparison. The following shall also be stated:

First. The date of the closing memoranda made in the books of the suppressed Contaduría, Anotaduría, or Receptoría of mortgages.

Second. The number of years covered by the Registry of the old Contaduría, Anotaduría, or Receptoría of mortgages, stating the books and packages of which it consisted, the state of their preservation, and the date of their closing memoranda.

ART. 321. The Inspector shall examine—

First. The indices of the old Contaduría, Anotaduría, or Receptoría of mortgages, as well as those of the new Registry; he shall verify some of the data they contain, referring to the proper records or entries; he shall state whether they are kept by years or municipalities, and he shall make a literal copy in the report of the headings of the columns of the different indices existing in the Registry.

Second. The *book of incapacitated persons*, stating the headings it contains and the last entry made therein, with the record of the Registry to which it refers.

Third. The *book of receipts*, of which he shall verify some of the entries it contains, by the proper records in the Registry.

Fourth. The *inventory* of the books and documents of the office. And,

Fifth. The packages of documents on file, stating in every case the number of documents contained in each package.

ART. 322. The Inspector shall state in the report the system followed by the Register in the record of documents, in certifying as to the freedom from encumbrances, or to the encumbrances of estates, and in the preparation of statistics, the number of assistants and their salaries, and the general condition of the office.

ART. 323. If, during the inspection the official making the same is informed, verbally or in writing, of some errors, informalities, or frauds committed in the office, the Inspector shall examine the books of the Registry for the purpose of stating in the report what may be proper with reference to the acts complained of.

ART. 324. Registers may demand and file a copy of the report of the inspection, verified and certified to by the Secretary taking part therein.

ART. 325. The President of the proper Audiencia shall examine the reports of the inspection, and shall return those which have not been

prepared in the manner prescribed in the foregoing articles, so that they may be redrawn. When any errors or irregularities appear in some Registry, he shall issue the orders he may consider expedient to repair and correct them, without prejudice to any action which may be proper against the Register. These reports shall be kept in the files of the Audiencia.

ART. 326. The report which said President must transmit every six months to the Colonial Department, shall contain all the details mentioned for reports of inspection with regard to all the Registries under his jurisdiction. At the same time he shall state any information he may have obtained with respect to the public and private conduct of Registers, and regarding the zeal and capacity they show in the discharge of their duties.

The Registry and Notarial Division, in view of said half-yearly reports, shall decide what may be proper, and enter what appears therefrom in the records of service and personal records of each Register.

ART. 327. A Register who is cautioned in the report of the inspection to correct some record, or remedy some error in form, shall communicate to the President of the Audiencia, in writing, that it has been done, as soon as he has done so, unless, considering the order of the Delegate improper, he makes the respective protest to said authority.

This fact shall also appear in the report of the inspection succeeding that in which said error was noted.

ART. 328. Any person who should have knowledge of some defect, informality, or fraud committed in some Registry, may inform the President of the proper Audiencia thereof either verbally or in writing. The President, in view thereof, shall issue any orders he may consider proper to ascertain the facts of the case, if he considers the complaint pertinent.

ART. 329. Whenever the President of an Audiencia is advised of any defects, informality, or abuse committed in some Registry of his district, he shall order an extraordinary inspection thereof to be made immediately.

ART. 330. The consultations by Registers with Judges of First Instance and with Presidents of Audiencias, shall always be made in writing, being limited, in accordance with the provisions contained in Article 276 of the law, to any doubts they may have as to the interpretation and execution of said law, and of the regulations enacted for its application.

Doubts and questions which refer to the determination of the legality of documents by virtue of which a record is demanded, or of the capacity of the parties thereto, must be decided by the Registers themselves, under their responsibility, in accordance with Article 18 of said law.

ART. 331. If Judges of First Instance themselves decide any questions which, in accordance with the first part of the foregoing article, are submitted to them, they shall communicate the questions submitted

to them and their decision to the President of the Audiencia, without carrying the latter into effect.

If the President of the Audiencia approves them, he shall so inform the Judge of First Instance, so that they may be carried out; if he disapproves them, he shall issue an order to this effect, but without executing it, submitting the same to the Colonial Department for a final decision.

In cases of doubt the provisions contained in Article 276 of the law shall be observed.

Presidents of Audiencias shall proceed in a similar manner when questions are submitted to them directly by Registers, and they are in doubt as to their decision.

Decisions of Judges of First Instance and of Presidents of Audiencias shall always state their reasons; to the questions they shall accompany their opinion and report.

ART. 332. Presidents of Audiencias shall submit a report to the Registry and Notarial Division of all questions decided by them with reference to the interpretation and application of the Mortgage Law and its Regulations, and of those in which they approve the decision of Judges, for which purpose the latter must give them proper information.

ART. 333. The provisions contained in Article 330 of these Regulations, and in Article 276 of the law, regarding the option of Registers to submit any doubts they may have to the President of the Audiencia or the Judge of First Instance, shall be construed as meaning when the former shall reside in the town of the Registry, the question otherwise being submitted to the Delegate.

TITLE IX.

PUBLICITY OF REGISTRIES.

ART. 334. The exhibition of the Registry ordered by Article 280 of the law shall be made at the verbal request of the person interested in consulting it, provided he clearly states the estate or property rights whose status he desires to ascertain.

ART. 335. The books of the Registry shall not be exhibited to the persons who request it, except during the time they are not required by the Register for the service of the office.

Persons interested to whom the exhibition of books is refused, may apply to the Delegate, and the latter, after hearing the Register, shall order what may be proper.

ART. 336. Private persons who consult the Registry may take therefrom any notes they may consider necessary for their own use, but without copying the entries or requesting any assistance from the office whatsoever except the exhibition of the books.

ART. 337. Certificates of entries of all classes relating to definite property shall include all the records of ownership entered in the respective period, and all records and marginal notes of property rights to said estates within said period, which are not canceled.

ART. 338. Certificates of entries of a specific kind shall include all those of the same kind which are not canceled, stating that no others of the same kind are in existence.

ART. 339. Certificates of records of mortgages against certain persons shall include all those created and not canceled, on all the property whose ownership is recorded in favor of said persons.

ART. 340. In the certificates treated of in the three foregoing articles, and in those the object of which is to show that no entries of a certain kind exist, those canceled shall only be mentioned when the Judge or Court, or the persons interested, request it, and in the case prescribed in Article 292 of the law.

ART. 341. Mandates issued by ordinary Judges and Judge-Advocates who, in accordance with law, take cognizance of criminal causes which are tried before military courts, and requests for the issue of certificates, as soon as complied with, shall be returned to the Judges or Courts, or to the interested persons, as may be proper.

ART. 342. The requests and certificates shall be written on the proper stamped paper, in accordance with the rules prescribed for these matters.

ART. 343. In all cases in which, in accordance with the law, the persons interested in the records may complain of the Register to the President of an Audiencia or to a Delegate, it shall be understood that they have this option only when the President resides in the same town, and not when he resides in a town different from that in which the Registry is situated.

ART. 344. When the petition of the persons interested, or the mandates of the Judges or Courts, do not state with sufficient clearness and precision the kind of certificates demanded, or the property, persons, or periods which the latter are to cover, the Register shall return the petitions with a memorandum in the margin stating the data he considers necessary, and the mandates, with a communication requesting said data of the Judge or Court.

The Register shall proceed in a similar manner whenever he is in doubt as to the property or records the certificate must refer to, notwithstanding that the mandates or petitions have been drafted with due clearness, if, on account of any unforeseen circumstance, error or confusion is feared.

Authorities and public officials who require any certificate shall apply to the Judge of the subdistrict, who shall issue a mandate ordering the Register to prepare it without charging any fees therefor, if, the question having been examined by said Judge, he believes that it affects the public service in a direct manner.

ART. 345. If it is not stated in the petition or mandate whether the certificate is to be literal or in abstract, a literal certificate shall be issued.

ART. 346. Whenever any entry of presentation must be inserted in a certificate, because the instrument to which it refers is awaiting record, it shall be copied literally, no matter how the rest of the certificate is drawn.

ART. 347. Whenever any entry which must be inserted in a certificate has been corrected by another entry, both shall be literally inserted, fees being collected only for the entry in force.

ART. 348. Certificates shall be drafted in accordance with the proper models which accompany these Regulations, with the necessary details, according to the kind and circumstances of the records therein included.

ART. 349. Although the records which are to be certified to, refer to different estates or persons, they shall all be inserted in one certificate, unless the person interested requests that separate certificates thereof be given him.

ART. 350. Registers of property can not issue certificates of records in which they, their wives, or relatives within the fourth degree of consanguinity or the second degree of affinity, are interested. In such cases the representative of the Department of Public Prosecution shall issue the certificate under his responsibility, or, in his absence, a lawyer of the subdistrict, who has attained his majority, to whom the Register shall forward the petition, they receiving the proper fees in accordance with the Schedule.

TITLE X.

APPOINTMENT, QUALIFICATIONS, AND DUTIES OF REGISTERS.

ART. 351. Registers shall have the character of public officials for all legal purposes, but subject to the provisions of these Regulations.

The office of Register is compatible with the practice of law.

ART. 352. Registers shall be treated as "Excellencies" within their offices and in public instruments, in which they shall occupy the place immediately below that of the Court of First Instance. They shall use as an insignia on formal occasions an octagonal medal of silver of the same dimensions as those used by Judges of First Instance, bearing the Royal Crown and hanging from the neck by an emerald-green silk ribbon. On the obverse it shall bear the Royal Coat of Arms; on the reverse an open book surrounded by a ribbon forming a bow, besides the following inscriptions: *Prior tempore potior jure;* on the bow, *Register of property*, and on the lower part, *February eighteenth, eighteen hundred and sixty-one.* On informal occasions they may also wear their insignia on the lapel of their dress coat, the medal being reduced to a fourth part of its usual dimensions and hanging to a green silk cord, like the ribbon, with a white thread at the edges.

ART. 353. Registers to be retired with pension at their own request when they reach the age of 65 years must apply to the Government through the President of the proper Audiencia and the Registry and Notarial Division, by means of a petition ratified before the Judge of First Instance of the subdistrict, and accompanying therewith a certificate of baptism or of birth.

ART. 354. A Register who desires to be retired with pension on account of physical disability must address his petition to the President of the Audiencia, accompanied by a physician's certificate.

In view thereof, the President shall order the Delegate to have an investigation made by the Court and two more physicians.

After the investigation has been concluded, the person who made it must take an oath before the inferior Court, stating in due form:

First. With what disease the Register is afflicted.

Second. If it is of such a nature as to disqualify him from discharging his duties.

Third. If, in their opinion, the disability is permanent.

In view of this declaration the Delegate shall forward the proceedings to the President of the Audiencia, who shall transmit them with his report to the Division, which, taking into consideration the proofs submitted, shall propose that the retirement with pension be granted, or not, and the Government shall order what it may consider proper.

The Division and Presidents of Audiencias may officially order that proceedings be instituted for the retirement of Registers when there is reason to suppose that they are incapacitated, observing the rules established in the preceding paragraphs.

ART. 355. Petitions for retirement with pension, of officials of the Division, and those for pensions due them or due Registers and their respective families, shall be treated in the manner prescribed by general legislation for pensions.

ART. 356. Registers who desire to be placed on the suspension list shall forward their requests through the Presidents of Audiencias to the Registry and Notarial Division, stating for what period they desire it and the reasons therefor, being permitted to inclose the papers they may consider proper. The Division shall forward the petition to the Secretary with their report.

For the granting of these requests, the proportion and preference fixed respectively in the second and third paragraphs of Article 395 shall be taken into consideration. The retention on the suspension list shall be obligatory for the period requested, which can not be reduced nor extended in any case. After the period of the suspension has elapsed the appointment shall be made in the manner prescribed by Article 389.

Registers who have been on the suspension list can not again be placed thereon until four years have elapsed since their return to service. Such Registers shall not be included during the time of their suspension in the rolls of the Corps for the purposes of Article 365.

This article shall be applicable to the officials of the Division, with the following modifications: The petition shall be addressed to the Secretary, through the Division; for the purpose of simultaneousness and preference two separate groups shall be formed—the first by the Chief, officials, and clerks, and the second by the copyists; although the former figure on the rolls of the Division for the effects of Article 268 of the law, they shall not be included in the rolls of Registers for the purposes of the provisions contained in Article 365 of these Regulations.

ART. 357. Registers of property who desire to exchange their places with each other must address their requests to the Government through the President of the proper Audiencia.

To permit exchanges, the existence of the following circumstances shall be necessary:

First. That the persons who desire the exchange are in possession of Registries of the same class.

Second. That they are not relatives within the fourth civil degree of consanguinity or legitimate affinity in a direct or collateral line, a fact they shall state under their responsibility in their petitions.

Third. That good reasons for the exchange exist, and that they are shown.

If the foregoing circumstances obtain, the Division shall forward the papers in the case, with its report, to the Colonial Secretary for a definite decision.

The Government may agree to an exchange between Registers of different classes when extraordinary reasons therefor exist, and after hearing the proper Division of the Council of State, whose report shall be published in the Gaceta, together with the Royal Decree granting the exchange.

ART. 358. Registers of property of the Colonies and those of the Peninsula having been placed on the same basis by the Royal Decrees of June 27, 1879, and November 17, 1890, any exchange requested must be made in accordance with the following rules:

First. Registers of the Peninsula and of the Colonies who desire to exchange with each other shall request said exchange both of the Department of Grace and Justice and of the Colonial Department, in a petition signed by both persons interested, through the proper superior offices, which, after coming to a decision as to the advisability of the exchange with regard to the Register under their several jurisdictions, shall forward the papers in the case, with their report, to the proper Secretary for a definite decision.

Second. To grant an exchange between Registers of property of the Peninsula with those of the Colonies the circumstances must be present which are required by the rules in force in the Peninsula regarding exchanges between its Registers and the rules established by Article 297 of the law and 357 of these Regulations.

Third. When an exchange between Registers of different classes is under consideration, the Sections of the Council of State which report on the questions to the respective Departments, shall be heard.

Fourth. Exchanges shall be ineffective if either of the Registers does not take possession of his office within the period provided by the Regulations.

ART. 359. As soon as a Delegate receives notice of the vacancy of a Registry, or the suspension of a Register, he shall order that the representative of the Department of Public Prosecution in the subdistrict take temporary charge of the office, and in his absence or inability that his substitute take charge.

In towns where there is more than one inferior Court of First Instance, the Delegate shall place the Registry in charge of such representative of the Department of Public Prosecution as he may consider proper.

The representatives of the Department of Public Prosecution and the substitutes shall not be required in such cases to give bond.

After the representative of the Department of Public Prosecution or his substitute has taken charge of the office, the Delegate shall make an extraordinary inspection, citing the Register, should there be one, or otherwise his heirs or the persons representing them, in accordance with the provisions contained in Article 312; he shall begin by entering the facts mentioned in Articles 320 and 321, so that after the proper report has been made it may be turned over to the temporary incumbent, without prejudice to continuing the inspection in the manner prescribed in Articles 318, 319, and 322.

ART. 360. Presidents of Audiencias shall appoint temporary Registers as soon as any vacancies occur, or when they order the suspension of Registers, or when the temporary Register previously appointed dies or resigns his office. They shall immediately report these appointments to the Division, which may confirm them or make others. In all cases where the reasons for the temporary appointment are known by the Division before the Presidents of Audiencias have knowledge thereof, the former may at once make the proper appointments.

Temporary appointments shall be given, whenever it is possible, to persons who possess the conditions of fitness mentioned in Article 298 of the law, and when it does not appear that they are included in any of the cases mentioned in Article 299; but they can not be given to persons who are not lawyers.

Registers of property, who by force majeure are prevented from exercising their respective duties, and those who have already served as temporary Registers, shall be preferred for the provisional charge of Registries.

If the person temporarily appointed by the Division is in the Peninsula, he shall embark for his destination by the first official steamer.

ART. 361. When the vacancy in the Registry is caused by the death of the Register in charge, the Delegate shall advise the President of the Audiencia thereof, forwarding a list of the lawyers of the subdistrict who may be appointed temporary Registers.

ART. 362. Presidents of Audiencias in advising their Delegates of the appointments of temporary Registers shall order that, after they have taken the proper oath, they be given immediate possession, in accordance with the provisions of Article 359, and he shall designate the public institution in which the fourth part of their fees shall be deposited, if they have not previously given bond to the satisfaction of said President.

ART. 363. Presidents of Audiencias shall order the suspension of temporary Registers when there is sufficient reason therefor; of these orders, as well as of vacancies, they shall advise the Division by the first mail, which may confirm said suspensions, officially order them, in a proper case, as of their own motion, and order the removal of temporary Registers, when, in proceedings instituted for the purpose, some offense in the discharge of their duties or in their public or private conduct is proven; the decision of the Division in all these cases shall not be appealable.

ART. 364. For filling vacancies in the office of Registers of property, in accordance with Article 303 of the law, when they are once before the Colonial Department, the proceedings shall be instituted by the Registry and Notarial Division for each vacancy. If the vacancy is to be filled by promotion, an announcement shall be published in the Gaceta de Madrid, the period of four months being fixed for the filing of applications, which shall be addressed to the Secretary, through the Division, by the applicants or their representatives.

This period shall begin to run for the applicants of the Peninsula, as well as for those of the Colonies, from the day following the publication of the announcement.

If the vacancy is to be filled by competition, the call for the examination shall be published in the official newspaper of the place in which it is to be held.

When several vacant Registries are announced, the applicants may include them all in one petition, briefly stating the ones they request and their order of preference, in a proper case.

The order for the announcement of filling of vacancies in either manner shall be issued within fifteen days from the time they are known in the Department.

ART. 365. A book shall be kept in the Division for the purpose of entering therein the order of succession to which any vacancies occurring correspond, a special degree of succession being opened for Registries of each class.

To determine the order of succession to which each class belongs the date on which the Division received official notice of the vacancy shall be taken into consideration.

If official notice of two or more vacancies in the same class is received on the same day, the order of succession corresponding to each one shall be fixed by the date on which they occurred, and if they were simultaneous they shall be determined by the Division.

Vacancies in Registries shall be filled in accordance with the following rules:

First. For a Registry to be filled first in order of succession, the Register shall be appointed from among the applicants who are in the highest class, and if there are several of the same class, the one who has rendered the longest service therein, taking into consideration the limitations mentioned in the first and third rules of Article 303 of the law.

To compute the length of service in the class, the period previously served in the same or in a higher class by a person who, after having descended, returns to the same, shall be taken into consideration, in a proper case.

When two or more Registers who make application have a right to the appointment, being of the same class and having served an equal period therein, the one who has been in the Corps the longest period shall be appointed, and if their length of service in the Corps is equal the Government may select the one it may consider proper.

Second. For a Registry which must be filled second in order of succession, the Register from among the applicants who has served the longest period in the Corps and is not included in rule number 3 of Article 303 of the law, shall be appointed.

Third. When the Registry must be filled third in order of succession, the Division taking into consideration the circumstances of the Registers making application and observing the provisions contained in rules 2 and 3 of Article 303 of the law, shall prepare the proper list and shall forward it to the Government, so that it may select that one of them who is to be appointed.

The Colonial Department shall publish in the month of January of each year two rolls of the Corps of Registers, one in order of service in the classes and the other in order of service in the Corps.

For the purpose of this Article the Chief of the officials of the Division shall be classed as Registers of the first class; the first and second Assistant as Registers of the second class, and the third Assistant as a Register of the third class.

When the officials of the Division apply together, if they should have a right of preference over the other applicants of the class of Registers, the order corresponding to them in accordance with their special graded rolls, shall be observed.

The Department of Grace and Justice shall give information in regard to the length of service and class of the applicants from the Peninsula.

ART. 366. The competitive examinations for Registries of property, in the case mentioned in Article 303 of the law, shall be subject to the following rules:

1. The call shall be made by the Registry and Notarial Division of the Colonial Department, or by the President of the proper Audiencias, as soon as, the vacancy having occurred, said Division has decided in what order of succession it is to be filled, and it shall be published in the proper official Gazette.

2. The Board of Examiners, when the examinations are to be held in Madrid, shall consist of:

The Chief of the Registry and Notarial Division of the Colonial Department, or the person discharging his duties, who shall be the President; one Professor of Law; one Register of property; one lawyer and one official of the Division, who shall act as Secretary, all of them being appointed in accordance with a Royal order, by the Colonial Secretary, for each examination held.

The Board of Examiners, when the examinations are to be held in the Colonies, shall be composed of:

The President of the Audiencia, or, in his stead, the President of the Chamber, who shall preside; the prosecuting attorney of the Audiencia, or, in his place, the assistant prosecuting attorney; an attorney of the bar of the capital, appointed by the President of the Audiencia; the Dean of the Notarial College, or the Notary who substitutes him, and a Register of property of the Colony, to be appointed by the President, who shall act as Secretary.

The appointments of the members to constitute the Board shall be published in the proper official Gacetas.

The office of a member of the Board in question shall be honorary and without pay.

3. The first examination shall consist in answering twelve questions, drawn by lot and relating to the following subjects: Four to Mortgage Legislation; three to Civil Law; one to Notarial Law; one to Commercial Law; one to Administrative Law; one to legislation regarding the tax on transfers of property and property rights, and one to judicial proceedings.

The second examination shall consist of preparing an essay on a subject drawn by lot from among 85 contained in a bag, relating to Mortgage Legislation, Notarial Legislation, Civil Law, and Commercial Law.

The practical examination shall consist of doing all the work required to record a document, or to refuse to record it, or to suspend an entry.

4. For each competition the Division shall publish the proper list of three hundred questions for the first examination and of 85 subjects for the second, and shall take care to forward the same in due time to the proper authorities.

5. For the third examination, one of the competitors shall select a number from among ten, relating to the same number of practical cases; and, in view of the facts, of which a copy shall be given each one of the competitors, they shall execute, within the period of eight hours

and under the surveillance of the Board, the proper work of the Registry until the return of the document, delivering their work to the person designated by the Board, who shall seal each set of papers in the manner prescribed in rule 13 of Article 307 of these Regulations. The competitors may make use of books. On the day fixed by the Board the competitors shall read their own work in public.

6. The Board shall propose for the vacant places the competitors who have obtained the first numbers, so that the place requested in the first place by the person interested shall correspond to number 1, the following one to number 2, and so on.

7. The following rules of Article 307 shall be applicable for these examinations, which, together with those contained in the present one, shall be published in each call, viz, 2, 3, 5, 10, 11, 12, 13, 15, 16, 17, 18, 21, 22, and 23, it being understood that in rule 2, when the examinations take place in the Colonies, the President of the Audiencia shall be substituted for the Division, and the Gaceta of the proper Province for the "Gaceta de Madrid;" that in rule 3 Presidents of Audiencias shall take the place, in a proper case, of the Chief of the Division; that in rule 12 rule number 6 cited therein, is rule number 3 of the present Article, and that in rule 22 four members of the Board are required to be present to hold sessions instead of five.

ART. 367. Appointments of Registers of property, by promotion or through competitive examinations, shall be made within the month following the termination of the competitive examination, or after the recommendation of the Board has been submitted.

All appointments of Registers by virtue of competitive examinations, transfers, or exchanges must be published in the Gacetas of Madrid and of the proper Colony.

ART. 368. Registers who request their transfer to other Registries, either by promotion or exchange, shall acquire from the time of their appointments the class of the Registry they obtain, and shall lose that of the Registry they are leaving, for the effects of Article 303 of the law. After the new appointment has been officially communicated, and after an order from the Delegate, they must leave their duties in the Registry, and the representative of the Department of Public Prosecution shall take charge thereof in the manner prescribed in Article 359, the Register being obliged, however, to remain in the same town to assist in the extraordinary inspection, until the facts mentioned in Articles 320 and 321 have been entered.

After the appointment of a Register of property has been made, the person interested shall receive the proper certificate, if he enters the Corps or ascends a class. Those who, having descended a class, return to the same, shall require a new certificate.

ART. 369. If the person interested is in Europe he shall be allowed sixty days from the date of his appointment to take passage for his destination. If he is in any of the Colonies he shall be allowed the

same period to embark, computed from the date of the approval of the Governor-General of the order containing the new appointment, being permitted to remain in Europe thirty days, in the latter case, after his arrival.

The Register elect must forward to the Registry and Notarial Division all certificates of departures and arrivals at his destination, and give an account of his residence in Europe during his stay there.

Registers elect, who are in the Peninsula or in the Colonies, shall have a right to an official passage, as an advance from the State, should they so desire; but in such case they shall reimburse the amount thereof by paying 15 per cent of the income of the Registry. The proper Treasury authorities of the Colonies shall see that the foregoing provisions are complied with.

ART. 370. In order to take possession, and after the proper bond has been approved, they shall be allowed the period of thirty days from the date of their arrival in the Colony of their destination.

Said period may be extended by the President of the Audiencia for good reasons, duly proven.

ART. 371. The bond may be given in money, public securities, or in estates.

The shares of the public debt, or any other which by special or general provisions of the Government are admitted to guarantee obligations in favor of the State, shall be considered as public securities.

Public securities offered as bond shall only be admitted for the highest published price they may have reached, according to the latest official quotation known on the day the deposit is made.

ART. 372. The bond consisting of public securities may be deposited in the General Depository as an obligatory deposit, with the following statement:

Bond furnished by N. as security for his administration as Register of property of ———, of the district of the Audiencia of ———, at the disposal of the President of the same.

The bond consisting of cash shall be deposited in said institution, or in the one designated by the Government for such cases, in the capital of the respective Colonies.

ART. 373. The bond consisting of estates shall be constituted by a mortgage in the manner prescribed by Articles 127 of the law and 66 of these Regulations, which shall be created by the owner of the property for the amount fixed for the Registry, and 50 per cent more for costs and expenses, in a proper case, stating that it remains at the disposal of the President of the proper Audiencia, as security for the faithful discharge of his office by the Register elect.

After the mortgage has been executed it shall be presented in the Registry of property for record, if proper.

ART. 374. After the bond has been constituted in cash or public securities the Register elect shall present to the President of the proper

Audiencia the certificate of his appointment, the receipt for the deposit, and, in a proper case, the latest official quotations of the Exchange.

If the bond has been given in property the Register elect shall present the mortgage with the proper certificate, also a detailed certificate of the incumbrances dated subsequent to the record of the former, and another certificate issued by the Treasury of the Colony, stating the income of the mortgaged property, which may have been calculated during the last five years in the assessment made for the land tax.

The President of the Audiencia, taking into consideration the amount of the bond fixed for the Registry, shall examine the respective documents, and shall issue a decree either approving or admitting it, or declaring that this can not be done, stating in the latter case the defects contained.

The receipt for the deposit shall be returned to the person interested, a certified copy thereof remaining in the office of the Audiencia.

In order to permit the approval of the mortgage bond, it shall be necessary that the annual rental of the property, capitalized at 4 per cent according to the certificate of the Treasury Department, its selling value shall exceed double the amount of all the incumbrances thereon, including that of the new bond.

The decision issued by the President of the Audiencia shall be communicated to the person interested on the day following its date. If it is not favorable to the admission of the bond, the Register elect may appeal to the Division, correct the defect contained in said bond, or constitute another, within the period prudently fixed by the President of the Audiencia.

In case of an appeal, the President of the Audiencia shall forward all the papers in the case, with his report, to the Division for the proper action.

If their decision is confirmatory, the person interested must correct the defect or constitute a new bond within the period fixed by the Division.

ART. 375. The Register elect, who prefers to make use of the privilege allowed him by Article 305 of the law, shall apply to the President of the Audiencia, presenting his proper certificate and requesting that the public institution be designated in which the fourth part of his fees shall be deposited.

The President of the Audiencia shall issue the proper order, so that these deposits may be admitted as obligatory and as a bond to answer for the faithful discharge of their duties.

ART. 376. Registers shall make said deposits in the manner and at the times they may consider convenient, provided, that at the quarterly inspection they present a receipt for the fourth part of all the fees collected from the time of the last visit until five days before the actual one.

In the report of ordinary inspections, an express statement of this fact shall be made.

As soon as the part of the fees deposited by the Register is sufficient to cover the amount fixed for the bond of his office, said bond shall be constituted with this amount in the ordinary manner, and the obligation to make further deposits shall cease.

ART. 377. Registers of property may at any time exchange their respective bonds for any of those mentioned in Article 371, for which purpose they shall request it of the President of the proper Audiencia, who shall not issue the order for the return or cancellation, in a proper case, until he has previously approved the one newly constituted, in accordance with the provisions contained in the present title.

ART. 378. The bond furnished for one Registry shall serve for any other the person interested may obtain, without prejudice to the increase necessary therein, if the Registry he is to take charge of requires a higher bond.

ART. 379. After the bond has been approved, or the public institution in which the fourth part of the fees is to be deposited is designated, the President of the Audiencia shall order that the certificate of the Register elect be approved and that, after the proper oath, he be given possession by the Delegate, for which purpose he shall issue the proper order.

ART. 380. Registers shall, before the proper Delegate, take an oath of allegiance to the King, and for the fulfillment of all the obligations imposed upon them by law.

After the oath has been once taken, it shall not be necessary to take another for the purpose of taking possession of other Registries.

ART. 381. The Delegate, by virtue of a letter containing the order from the President, and before taking the oath, in a proper case, shall install the Register appointed, requiring that the books and papers of the Registry be delivered to him according to the inventory, in his presence and before the proper Clerk or Secretary, making a memorandum of the delivery.

The original of this memorandum shall be sent to the President of the Audiencia, a certified copy remaining in the possession of the Register.

ART. 382. The Register elect, who, without just cause, duly proven, allows the periods fixed for his departure, to give bond, or to take possession, to elapse, shall be considered as having resigned, and shall lose the right acquired by his appointment.

ART. 383. The Division shall keep a record of each Register, in which, besides the facts regarding his appointment, there shall be stated—

First. The errors they commit and which appear in the report of the inspections, or in the communications of the Presidents of the proper Audiencias.

Second. The administrative or judicial actions instituted because of their conduct.

ART. 384. In order to obtain the return of the bond given by Registers of property, the person interested, or his heirs, must request the

Judge of First Instance of the subdistrict in which he last served, to publish the request in the Gaceta de Madrid and in the official newspapers of the proper Colonial province, every six months for the period of three years; the Register must have ceased to discharge the duties of his office; persons who may have any claim to present shall be cited, so that, within the period mentioned, they may file them with the Judges of First Instance of the subdistricts in which the former may have served, for which purpose all said subdistricts shall be mentioned in the announcement.

After the period has elapsed without any claims having been presented, the proper certificate shall be prepared by the President of the Audiencia, and another by the Treasurer of the Province, stating that in addition there is no claim against the Register for any liability contracted in the discharge of his office.

When the return is requested by a temporary Register it shall be announced every month for the period of six months, and after this period has elapsed the return shall be ordered, if it be proper.

A Register who has had charge of different Registries and requests the return of his bond shall prove that the latter is not subject to any liability, and that the period fixed in Article 306 of the law has elapsed, by means of certificates issued by the Judges of First Instance in whose subdistricts he has discharged his duties.

The return shall be made by virtue of an order issued by the President of the Audiencia.

ART. 385. The removal of Registers shall legally take place when it is declared by a judicial judgment, or when a correctional or punitive penalty has been imposed; and it may be ordered by the Government when there is sufficient cause therefor.

ART. 386. The following shall be considered sufficient causes for the order of removal of Registers:

First. For having declared themselves or having been judicially declared in bankruptcy or assignment.

Second. For not being worthy of holding the position by reason of their depraved conduct, dishonorable behavior, or by reason of habitual negligence in the discharge of their duties.

Third. For being absent from the town in which the Registry is situated without the proper leave or permission; for seriously disobeying the orders of their superiors regarding the exercise of their duties, or for lack of proper hierarchical subordination.

Fourth. For having been disciplined three times in the capacity of Registers.

Fifth. For being debtors to the public funds as taxpayers.

Sixth. For not having paid the indemnity referred to in Article 323 of the law within the ten days following the notice of the final judgment contained in the sentence.

Seventh. For not having the indices of the Registry up to date.

Eighth. For ostensibly acting against the institutions governing the country.

ART. 387. The following are sufficient causes for the transfer of Registers:

First. For not being in good repute with the public.

Second. For taking part in politics of the district, excepting the exercise of the right of suffrage.

Third. Any other special and serious occurrences or important considerations of the public order.

ART. 388. When the Division, or the Presidents of the Audiencias, receive notice that some Register has given cause for his removal or transfer, they shall order the proper Delegate to institute proceedings, in which the local authorities and such persons as are considered proper by the President of the Audiencia shall be heard.

After the necessary evidence has been collected, the Delegate shall forward the same, with his report, to the President; and, should the latter consider that the charges against the Register are not well founded, he shall forward it to the Division.

If he considers removal, transfer, or discipline proper, he shall formulate the charges, and shall give a copy of the evidence to the person interested, so that within the period of eight days he may answer it and submit his proofs, which must be given to the Delegate, a reasonable period being fixed for this purpose. After proofs have been submitted, the papers shall be returned to the President of the Audiencia, who shall forward them with his report to the Division, which shall propose the decision they may deem advisable.

Should it be unfavorable, the evidence shall be forwarded to the proper Section of the Council of State for consultation.

The Government, in view of all this, shall decide as it may deem proper.

In cases of transfer, the Register can not again, by way of promotion, return to the Registry from which he is removed.

In cases where the removal is legal, the Judges and Courts shall forward a certificate of the decision to the Division.

The President of the Audiencia shall report to the Division the decree ordering the proceedings, stating his reasons therefor.

ART. 389. After the transfer of a Register has been ordered it shall take place as soon as there is a vacancy in the same class which has not been announced.

The Register transferred does not rise a degree in classification for the effects of Article 365 of these Regulations.

If the Register transferred does not appear to give a bond or to take possession within the legal periods he shall be understood to have resigned, and shall be definitely dropped from the Corps of Registers.

ART. 390. From the decision rendered in the administrative proceedings for the removal or transfer of Registers or the removal of officials

of the Division the persons interested may bring the proper administrative action for the hearing of disputes.

ART. 391. Registers shall not absent themselves without permission. Delegates may grant Registers leaves of absence for eight days.

Notwithstanding the provisions contained in the preceding paragraph, Registers of property are hereby authorized, when it is necessary, to absent themselves from the town of their residence for the purpose of depositing the amount collected by way of taxes on property rights and transfers of property, without leave or permission previously being obtained from any person whatsoever, but in such cases advising the Delegate, by means of a communication, of the day they are going to be absent, as well as of the reason therefor and leaving the substitute in charge of the Registry. In these absences said Registers can not spend more time than is reasonably necessary to execute their duty, and on the day of their return they shall advise the Delegate that, having performed their duty, they again take charge of their office. The Judges delegated shall report to the Division whenever Registers absent themselves by virtue of the authority granted them, as well as of the time of the absence and the reasons therefor.

In no case shall leaves of absence be granted if a substitute is not left in charge of the Registry.

Leaves of absence not taken advantage of within a month from the date on which they were granted shall be forfeited, counting from the date on which the persons interested receive notice thereof.

They shall also be forfeited when the substitute resigns his office, or when it is impossible for him to continue therein, and when there is no person to take charge of the office under the responsibility of the Register.

The Delegates shall report to the President of the proper Audiencia, and the latter to the Division, the date on which Registers make use of the leaves or permission granted them to absent themselves, and of the day on which they again take charge of the office, so as to enter the same on the proper personal records.

ART. 392. Registers may request leaves of absence in order to absent themselves from their duties in the Registry on account of sickness, or for any other serious cause which forces them to temporarily absent themselves from the town where they reside.

ART. 393. Requests for leaves of absence shall be addressed to the President of the Audiencia through the Judge of First Instance.

If a leave of absence is requested on account of sickness, a certificate of the physician shall be sent with the request, justifying the same.

ART. 394. The Judge in forwarding the request for leave of absence may make any observations he may consider proper regarding the reasons therefor, and whether the absence of the Register will affect the service. Before making this report, the Judge shall ascertain whether the substitute appointed can take the place of the Register.

ART. 395. The President of the Audiencia, should he deem it advisable, and in view of the report and information he may receive regarding the truth of the facts alleged, may grant a leave of absence not to exceed two months.

This leave of absence can not be extended, and may be enjoyed within or away from the respective Island once only during each year. It shall be computed from the date on which Registers turn over their offices to the substitute, and shall end after two months, at which time they must again have taken charge of the Registry. These leaves of absence can not be granted simultaneously to more than one-fourth of the number of the Registers belonging to the jurisdiction of each Audiencia, undividable fractions being considered in favor of the Registers.

To obtain leaves of absence in cases incompatible with the proportion prescribed in the foregoing paragraph, that official shall be preferred who has for the longest time been without leave of absence.

The Registry and Notarial Division may also grant the leaves of absence referred to in the foregoing article, in accordance with the provisions contained in the two preceding paragraphs.

ART. 396. Registers who have not had any leaves of absence for two years may the following year obtain a leave for four months, which can not be extended either within or without the Island. This leave may only be granted by the Colonial Secretary, or advanced by the Governor-General in cases of urgency, and with the requisites prescribed in the preceding article, except in the manner of computing the time thereof, if it is to be taken outside of the respective Island, in which case it shall begin on the date of departure from said Island and shall end on the day of the direct return to the same from the point to visit which the leave of absence had been requested.

Registers who have not had any leave of absence for three years may the following year be granted six months. Should they not have had any leaves of absence for six years, they may obtain eight months, and twelve months if they have not had any for ten years. All leaves of absence treated of in this paragraph can not be extended, and shall be granted by the Colonial Secretary or advanced by the Governor-General, in accordance with the rules contained in the preceding article, with the exception of the computation of time, it being understood that they begin on the day of the arrival at the point for which they were requested, if the trip is a direct one, and that they end on the date of their direct departure for their residence. In case the voyages are not direct, the leave of absence shall begin on the day of the departure from the respective Island, and when the leave ends the Registers must be found in charge of their offices.

Registers shall forward to the Registry and Notarial Division the certificates of departures and arrivals issued by the Captains of Ports, or Consuls of Spain, according to the case, of their trip to the point where they are to enjoy their leave, as well as of their return to their

duties, so as to show the dates on which they begin and end their leaves of absence, being also required to give an account of their residence during the period of their leave.

ART. 397. The leave of absence granted a Register shall be invalid if, before making use thereof, or being on leave, he is transferred to another Registry, an order of ratification being necessary to allow him to use it or to continue enjoying it until its end, according to the case. In all cases the date of departure from the point where the official happens to be shall be taken into consideration, to include it within the leave of absence, the latter not being ratified if said period is greater.

ART. 398. Any voluntary detention or interruption of the voyage on the return trip, after having made use of the leave of absence, shall be just cause for the removal proceedings of the Register interested; these proceedings shall also be instituted when, the leaves having expired, the Registers shall not have proven their departure for their destination. For no reason whatsoever shall the passage be advanced to Registers making use of their leaves of absence, no matter for what cause the leave is granted and to what point they are going.

Commissions for service outside the respective Island, and any form of authorization whatsoever, other than that established in the preceding articles, requested by Registers, to absent themselves from the point of their official residence, are prohibited.

ART. 399. Governors-General and Presidents of Audiencias, in a proper case, shall report to the Secretary or to the Division concerning the leaves of absence they advance or grant to Registers, stating the reasons therefor, as well as the ones they refuse, also stating the reasons for said refusal.

In the record of each Register, leaves of absence which are requested or granted shall be noted.

ART. 400. Any Spaniard, who is a layman, over 25 years of age, may be appointed the substitute of the Register, excepting Notaries and Court Clerks (Escribanos de Actuaciones).

ART. 401. Whenever a substitute is to take the place of a Register of property, the Delegate shall previously be advised thereof, stating whether the substitution is made on account of sickness or legitimate absence, the only reasons which can authorize it.

In case of the death or physical disability of the substitute who is legally in charge of the Registry, the representative of the Department of Public Prosecution shall immediately take charge of the office until the Register returns, appoints a new substitute, or the disability disappears.

ART. 402. A substitute who takes the place of a Register during his absence or sickness shall not be entitled to any other recompense than that which may have been agreed to with the Register and to be paid by him.

ART. 403. If, when a Register requests leave of absence, the substitute appointed is incapable of taking his place, the Judge shall state this fact in his report, and the President shall suspend his decision until he has approved the appointment of another substitute.

ART. 404. The provisions contained in Articles 80, 277, and 350 of these Regulations shall be applicable, even if on account of the absence or sickness of the Register the substitute is in charge of the Registry.

ART. 405. For the carrying out of the provisions contained in Article 310 of the law, Registers in making the tables required therein shall observe the following rules:

First. The statements shall include all the facts which appear in the instruments presented in the Registry during the year, whatever may be their date, provided they have been recorded during the same period. The documents awaiting record within the legal period for the previous year shall be included in the tables of the same.

Second. Cautionary notices shall not be included in the tables.

Third. In recording in their proper places the fees of Registers, all those earned shall be entered, even if for any reason whatsoever they have not been collected. Therefore, not only shall those earned for the record or principal entry be included, but also all those occasioned by the document, such as the entry of presentation, marginal notes, memoranda at the foot of the instruments, etc.

Fourth. The absence of any of the facts required by the tables, as well as any particular point relating to the statistical service, shall be concisely and clearly stated, by means of a memorandum, for the purpose of its decision and the effects resulting therefrom.

Fifth. At the foot of each table the date of its compilation shall appear, the Register shall affix his full signature thereto, and it shall be stamped with the stamp of the office. Registers shall also take into consideration the observations referring to each of the tables which appear at the foot of the respective forms.

There shall be made in the personal record of the Register to whom it refers a memorandum of all favorable or unfavorable mention to which the statistical service may give rise.

TITLE XI.

RESPONSIBILITY OF REGISTERS.

ART. 406. Registers shall be subject to disciplinary jurisdiction in the manner prescribed by these Regulations.

ART. 407. The disciplinary jurisdiction over Registers of property shall be exercised—

By the Presidents of Audiencias.

By the Colonial Secretary, in accordance with a report from the Division.

ART. 408. Registers of property shall be disciplined—

First. When, by word, letter, or act, they show disrespect to their hierarchical superiors, Delegates being such for this purpose, whether they are Judges of First Instance or Municipal Judges, Inspectors, Presidents of Audiencias, or the Registry and Notarial Division.

Second. When they are tardy or negligent in the fulfillment of their official duties.

Third. When they are guilty of a breach of decorum within or without the office.

Fourth. When their moral conduct or their vices lower them in the esteem of the public, and the Government does not make use of the privilege granted by Article 308 of the law.

Fifth. When, in performing the work of the Registry, they infringe upon the legal provisions, and the Government does not make use of said privilege.

ART. 409. The correction of Registers of property may be requested—

By private persons even when they are not directly injured.

By Delegates.

By Presidents of Audiencias.

By the Division.

ART. 410. The proceedings for the purpose of imposing a correction shall be in accordance with the following rules:

First. Private persons shall file their complaint with the proper delegated Judge, accompanying therewith the documents on which it is based, or stating the proof they may consider proper, which must be made within the period of eight days. The Delegate shall submit everything to the Register, so that within the period of three days he may answer in writing and submit, should he desire to do so, proofs to the contrary, which must also be investigated within the period of eight days; and on the day following he shall forward the papers in the case, with his report, to the President of the Audiencia, who may require new facts if he considers it necessary, and in view of everything shall declare that there is no cause for the correction, or shall impose the correction he may deem proper, in accordance with the provisions contained in Article 415. From the resolution of the President of the Audiencia an appeal lies to the Secretary, who shall decide after hearing the Division. This decision shall be final.

Second. A similar procedure shall be observed when the correction is officially requested by Delegates or Presidents of Audiencias.

ART. 411. The Secretary, at the instance of the Division, may discipline Registers of property, without first instituting proceedings, by a warning, reprimand, or fine, when they are guilty of insubordination or disrespect to the Division or to the orders from the same.

In the case of No. 4 of Article 408, the Division must transmit the facts to the Delegate, through the President of the Audiencia.

The Delegate shall institute the proceedings in the manner prescribed in the foregoing article, with the only difference of forwarding the

papers with his report to the Division through the same channel, so that it may propose what is proper.

ART. 412. The period within which to enter an appeal against the decree of the President of the Audiencia shall be one month, computed from the day following the one on which the imposition of the correction is communicated.

The appeal shall not be admitted if it is not first shown that the fine imposed has been paid.

ART. 413. The proceedings instituted for the offenses referred to in No. 5 of Article 408, shall be in accordance with the provisions contained in the law and these Regulations.

Said proceedings shall be officially instituted, no schedule fees being collected by virtue thereof when the offense denounced is wholly or partially proven. If the complaint or denunciation has been finally declared manifestly improper, said fees shall be paid by the person who instituted it.

ART. 414. The other proceedings shall always be officially instituted, and without the collection of any schedule fees.

ART. 415. Presidents of Audiencias may impose the following disciplinary corrections on Registers of property:

Warning.

Reprimand.

Fine, not exceeding 500 pesos.

The Secretary may, besides, impose the following:

Suspension for a period of from three months to one year.

Forfeiture of promotion and transfer for a period of from one to three years.

These corrections shall only be imposed for the offenses embraced in Nos. 4 and 5 of Article 408.

In the case of suspensions, the appointment of a temporary Register shall immediately be made, in accordance with these Regulations.

ART. 416. Warnings and admonitions made to Registers in decision of administrative appeals, against the determination as to the legality of documents made by them, shall not be understood to be disciplinary corrections.

ART. 417. Presidents of Audiencias shall report to the Division the institution and the result of proceedings, so that they may be entered in the personal records of the proper interested persons.

ART. 418. Besides the suspension which may be imposed in accordance with Article 415, Registers shall be administratively suspended from their offices:

First. When they have not deposited a quarter of the fees earned, as prescribed by Article 274 of the law.

Second. When, having been sentenced by a final judgment to indemnify loss and damage, they do not replace the bond or secure to the claimants the amounts of their respective judgments within the period fixed by Article 326 of the law.

Third. When a civil action against a Register, for offenses committed in the exercise of his office having been admitted, and a cautionary notice against his property having been decreed, in accordance with Article 328 of the law, the latter is rendered ineffective because he does not possess any property, or if he does not sufficiently secure the amount of the judgment, as prescribed by Article 326 of the law.

Fourth. When a Register, having been tried criminally, is sentenced to imprisonment, and the sentence is executed, or he remains at liberty under bail.

Fifth. When proceedings for removal are instituted in accordance with Article 308 of the law.

In the first, second, third, and fourth cases of this article the suspension shall be ordered by the President of the proper Audiencia, and in the fifth case the Secretary shall order it, if he considers it proper.

ART. 419. A Register who is suspended from his office for any of the reasons mentioned in the fourth and fifth cases of the preceding article shall have a right, if the suspension is subsequently raised, to a full half of the fees collected by the temporary Register, who must for this purpose deposit the amount indicated monthly in the Government office of the Court of First Instance, at the disposal of the President of the Audiencia.

A temporary Register can not, in the cases of the preceding article, devote to the payment of the Assistants a greater sum than that fixed by his predecessor for the same purpose, without obtaining special authority therefor from the President.

ART. 420. The final judgment requiring the Register to indemnify the damage caused by his acts to private persons, shall not be published in the Gaceta de Madrid nor in the official papers of the proper Colony, if within the period of eight days, computed from the date of the notification, the payment of the amount due is made, or the amount necessary for this purpose is deposited.

When the Chambers of Justice of the Audiencias issue a final judgment sentencing a Register to make good any loss or damage, they shall order, at the same time the latter is communicated to the persons interested, that a copy thereof be forwarded to the proper Audiencia, so that, in view thereof, he may adopt the measures he may deem necessary as soon as practicable.

TITLE XII.

FEES OF REGISTERS.

ART. 421. The fees earned in accordance with Title XII of the law are the absolute property of the Registers, and they may be demanded at once, and in specie.

ART. 422. For any illegal exaction of fees, the persons interested may bring a judicial action in the proper manner and before the proper

person, in accordance with law, according to the amount for which action is brought.

When the action is decided by a final judgment, the Register shall be liable for the return of double the amount of the excess, which shall be paid in the proper paper of fines with costs.

This provision shall be understood without prejudice to the prescriptions contained in Articles 409 of the Penal Code for Cuba and Puerto Rico, and 398 of that for the Philippines, when a criminal action is brought on account of the illegal exaction of fees.

A report shall be given the Colonial Department of all final judgments rendered, regarding the illegal exaction of fees by Registers.

ART. 423. In order that the Register may demand the fees earned in accordance with the provisions contained in Article 335 of the law, the person in whose favor the right has been recorded or entered, or the certificate has been issued, or the person who requested said record, shall be considered as directly interested.

If, after the record or entry of an instrument has been made and another is presented, transferring the ownership of the same estate, or right charged thereon, and for which the Register has not received the fees for the record, he can not decline to make the entry or record requested; but the person in whose favor the new record or entry is made shall remain under the obligation to pay the fees earned and not collected for the record of the first instrument.

ART. 424. When the instrument presented in the Registry for record or entry does not state the value of the property or property right charged thereon, the interested persons must annex thereto a document showing said value, or, in the absence thereof, a declaration sworn to and signed, in order that the Register may adjust his fees in accordance with the schedule, the signers being responsible for any imposition or fraud committed.

When the Register has good reason to believe that in the instrument presented, or in the document or declaration annexed thereto, the true value of the property was incorrectly stated, to the detriment of his interests and to those of the Treasury, he may request of the Municipality or Assessment Board, and it must furnish to him an official memorandum of the supposed annual rental of the property, according to the Assessment lists. If from this rental, capitalized at 3 per cent on agricultural property and at 5 per cent on city property, it should appear that in fact, the estate has a greater value, he shall collect his fees in accordance with the latter, and shall include in the record or entry, besides the value given by the parties, the appraised value, according to the facts submitted, filing the memorandum in the proper package.

If, in the case mentioned in the preceding paragraph, the Municipalities or Boards have not forwarded the official memorandum of the supposed value of the property before the certificates are to be delivered or before the effects of the entry of presentation lapse, the Registers may

collect their fees in accordance with the value given the property in the immediately preceding record.

For the adjustment of the fees to be collected for entries of attachments, the amounts for which the writs were issued shall be considered by Registers of property, when the value of the estate or property right entered is sufficient to cover said sum; should it not be sufficient, it shall be adjusted to the value of the estate or property right which is the subject of the entry.

ART. 425. The State, Province, and Municipality shall defray the fees for records ordered by them, relating to property or property rights which are subject to record, in accordance with Article 24; but when they refer to estates which are alienated, the amount thereof shall be included in the expenses of the auction proceedings, which must be defrayed by the purchasers.

ART. 426. In order that a Register may collect his fees judicially, in accordance with the provisions contained in Article 336 of the law, he shall prepare the proper statement, giving the name and surname of the debtor, kind and date of the work done in the Registry for which the fees are earned, the amount of the latter, and the numbers of the Schedule applied.

The Register shall present a petition to the Municipal Judge or to the Judge of First Instance of the subdistrict in which the Registry is situated, according to the amount of the claim, annexing thereto the statement mentioned in the preceding paragraph, and the proper Judge shall issue the mandate, proceeding afterwards for the judicial collection, in the manner prescribed by the Law of Civil Procedure.

When the Register has several claims against one or more debtors, they may all of them be embraced in one statement; and to determine the competency of the inferior Court, the total amount of the claims mentioned shall be taken into consideration.

ART. 427. When the person who is to pay the fees earned by the Register considers that they are excessive he may appeal to the President of the proper Audiencia, requesting that they be adjusted, and declare what fees the Register shall collect, depositing beforehand in the office of the Court of First Instance the amount thereof. The President of the Audiencia shall request a report of the Register and shall decide as he may deem just.

If judicial proceedings for collection have been instituted, and the person interested does not agree with the account of the Register, he may bring the action referred to in the preceding paragraph before the inferior Court having jurisdiction of the question, which, after the amount has been deposited or the attachment executed, shall suspend the proceedings and forward the case to the President of the Audiencia for the proper decision, after taking the steps mentioned in the foregoing paragraph.

The persons interested may appeal from the decisions of Presidents of Audiencias to the Registry and Notarial Division.

ART. 428. An action for the collection of fees shall be barred after three years, computed from the date on which they were earned by the Register.

ART. 429. The official stub books shall be supplied to Registers by the Division, the former paying for them. The Registers must not collect any fees whatsoever without giving a detailed receipt to the person paying them, who shall sign the stub to be kept in the office, stating that he agrees thereto. Should he not know how to sign, a witness shall do so at his request. The omission of these requisites shall make the collection illegal and subject the Register to the consequent liabilities.

TITLE XIII.

RELEASE FROM EXISTING INCUMBRANCES.

ART. 430. Registers shall not admit any request the object of which is to release charges or incumbrances recorded in the old books.

ART. 431. In order that the incumbrances treated of in Article 349 of the Law may be the subject of proceedings to clear the title, it shall be indispensable that when said proceedings are instituted they are not possessed by the legal representative of the persons in whose favor they are recorded.

ART. 432. In the institution of proceedings for clearing title, which in accordance with Articles 358 et seq. of the Law is the attribute of Registers, the latter shall consider as material the differences they may find between the contents of the instruments presented to them for the institution of said proceedings to clear the title and the books of the Registry for the effects mentioned in rule number 3 of Article 361 of said Law, when they notice any considerable difference in the area of the estate, in the number of its trees or plants, the amount of the property right in the period of possession of each person, or when in the instrument any incumbrance is omitted which appears uncanceled in the Registry.

If the person interested considers himself injured he shall make use of his privilege by bringing administrative action or instituting judicial proceedings.

ART. 433. To carry into effect the notices prescribed by rules numbers 5 et seq. of Article 361 of the law, the following shall be observed:

First. When the person to be notified resides, even temporarily, in the same town in which the Registry is situated, if he appears at the proper time and voluntarily in the office, he shall be notified.

Second. If he resides in the town in which the Registry is situated, or in any other of the same subdistrict, and he should not present himself for the purpose voluntarily and at the proper time, the Register shall communicate with the Municipal Judge of the town of his residence, transmitting a copy of the material part of the petition, in order that, in accordance with the prescriptions contained in Articles

508 and 509 of the Law of Civil Procedure for the Philippines, and 524 and 525 of that for the Antilles, the former may appear before the Register in order to be notified, with a warning that if he does not appear within the period fixed he shall be liable for any damage that may arise.

Third. The Municipal Judge shall return to the Register the copy referred to in the foregoing rule, with the papers, showing that the citation mentioned in the same rule has been made, which papers the Register shall annex to the petition, in order that they may supply the effects of the notice, if the latter is not served, because the person to be notified can not be found.

Fourth. If the latter resides in a different subdistrict from that in which the Registry is situated, the Register shall forward the communication and the copy mentioned to the proper Judge of First Instance, so that he may order that said papers may be executed and returned in due time by the proper Municipal Court.

Fifth. The notice shall be served in the office of the Registry, unless the persons to be notified are officials, in which case it shall be served at their residence, after a proper courteous notice.

For the work done by the Register in compliance with the provisions contained in this article, fees shall be earned in accordance with the judicial schedules in force for Clerks (Actuarios) of Courts of First Instance for the institution of administrative proceedings.

Sixth. When there is proof of any unidentified interested persons, the Register shall forward to the Municipal Judge the edicts which are to be posted or published in the same locality, or in any other of those embraced in the same subdistrict; and with regard to those which are to be posted or published outside of the same, the Register shall forward them to the proper Judge of First Instance, so that he may order said publication.

Municipal Judges, after having made this publication, shall return the papers, stating this fact directly, or, in a proper case, through the Judge of First Instance of the subdistrict.

ART. 434. The memorandum which, in accordance with the provisions contained in Article 375 of the law, must be made by the Register in the margins of the special Registries of the estates, shall be made opposite the last entry of ownership of the estates or the right cleared in the following terms:

The mortgage (annuity (censo), or whatever it may be), which appeared to encumber the estate (or property right) in favor of ———, consisting of ———, has been extinguished by virtue of a judgment for clearing the title, issued by the Judge (or Court) of ——— on the —— day of ———, at the instance of ———, as appears by a certified copy issued by ———, on the —— day of ———, which has been presented in this Registry, on the —— day, at —— hour, as appears from entry of presentation number ——, folio —— of volume ——— of the Day Book ———, and it is filed in the proper package under number ——. (Date, surname, and fees.)

The Register shall also make the proper marginal note, in compliance with the prescriptions of Article 453.

TITLE XIV.

UNRECORDED DOCUMENTS AND ENTRIES OF POSSESSION.

ART. 435. The prohibition to admit documents in Tribunals, Councils, and offices, which have not been recorded, mentioned in Article 389 of the law, shall be observed even when said documents can no longer be recorded by the person who desires to make use thereof, provided it is desired to prove any right whatsoever arising from the instrument or contract to which they refer, but not when they are invoked by a third person in support of a different right, not depending on said instrument or contract.

With the exception of this case and those mentioned in Article 389 of the law, the Tribunals, Councils, and offices shall return to the persons interested the unrecorded instruments which are presented, as though executed without the requisites of the law, and they shall not permit that a certified copy or extract of the same shall be made in decrees or proceedings.

Notaries shall state, in documents to be recorded, the obligation to present them in the Registry, and shall call attention to the provisions of the said Article 389 of the law.

ART. 436. An owner who does not possess a recorded title may only justify the possession, for the purpose of recording his right, by means of the proper proceedings instituted in accordance with Articles 390 and 391 of the law.

When the persons interested can not, for any reason whatsoever, present in the proceedings the documents mentioned in Article 391 of the law, Registers shall refuse the record, without prejudice to the person interested making use, should he deem it proper, of the privilege mentioned in Article 395 of the law, to prove the acquisition of ownership.

If it appears from the documents that the tax is paid in the name of the owner by a person other than the one who desires to prove the possession, and there is no other defect or obstacle preventing the record, the latter shall be suspended, and a cautionary notice shall be made thereof, because of an error capable of correction.

ART. 437. It shall be understood that a written title is lacking for the purpose of recording the possession in accordance with Articles 390 et seq. of the law, not only when the person really does not possess said title, but also when, the owner having one, he can not demand its immediate record because it has to be brought from a point at a distance from the place where it is to be recorded, or for any other reason whatsoever which compels him to defer its presentation. This circumstance may be stated in the proceedings and in the record itself.

ART. 438. In the proceedings to justify possession the person instituting them can not be required to present the title of acquisition of

the estate or right, nor shall any opposition on the part of an interested person be admitted, except such as is limited exclusively to a right of possession in his own name.

The question of right may be brought up in a declaratory suit only.

In the judicial proceedings for possession, as well as in voluntary jurisdiction, neither the intervention of a solicitor nor lawyer is required, and stamped paper shall be used.

When the object of the same is to record one or more estates, the value of all not exceeding 300 pesos, Court Clerks (Actuarios) shall be entitled to 2 pesos as judicial fees.

If the value of the estate or estates exceeds 300 pesos, and is not more than 1,000, they shall be entitled to 4 pesos as said fees.

If the value of the estate or estates exceeds 1,000 pesos, the fees shall be paid in accordance with the judicial schedule.

The fees earned in said proceedings, when they are instituted before Municipal Courts, shall be distributed, a third each, to the Judges, Public Prosecutors, and Clerks of the same.

ART. 439. Whenever it is necessary to suspend the carrying out of the provisions contained in the preceding article in regard to the amount of the fees, the person interested shall request it, annexing to his petition a sworn statement stating the value of each one of the estates. If said value has been diminished to the prejudice of the officials who are entitled to the collection of the fees, the latter may make such claims as they may deem just, but without staying the course of the proceedings requested, nor making any further charges on this account.

ART. 440. The records which must be made to prove the ownership or possession, which have been justified by the means established by Article 390 et seq. of the law, shall be made in accordance with the rules contained in the law and these Regulations for records in general, besides stating the special details required in each case, as contained in the documents presented in the Registry, to obtain the record.

ART. 441. The persons who have in their favor any entry or possession, and desire to make use of the privilege allowed them by paragraph 6 of Article 393 of the law, shall present a petition to the Municipal Judge of the place in which the estate is situated, with a certificate of the Register, in which shall be stated that twenty years have elapsed from the date of the record, and that there does not exist in the Registry any memorandum indicating that the prescription has been interrupted, requesting in virtue thereof that the conversion of the entry of possession into a record of ownership be announced by an edict in the Official Bulletin of the Province, in order that the persons who may consider themselves prejudiced may oppose it within the period of thirty days, computed from the date of the publication of said edict.

After the thirty days have elapsed without any claim having been made, the Municipal Judge shall state this fact, shall declare the pro-

ceedings closed, and shall order a certified copy in duplicate of the foregoing proceedings issued to the petitioner.

With this copy the petitioner shall appear before the Register in order that the conversion may be carried out, which shall be done by means of a marginal note; one of the copies of the certificate being filed and the other being returned to the person interested.

ART. 442. Any person who has in his favor any of the property rights mentioned in the second, third, fifth, and sixth numbers of Article 2 of the law, which has been acquired before May 1, 1880, in the Antilles, and December 1, 1889, in the Philippines, on another's real property, may ascertain by the Registries if it is recorded or not. If the record has not been made, although the ownership of the property is recorded in favor of its owner, the person interested may request the record of the right in a separate entry by presenting his title or taking advantage of any of the means established by Title XIV of the law.

If neither the property right in question nor the ownership of the property affected thereby be recorded, the person who has said right in his favor may present his title at once, so that from it an entry of presentation and a cautionary notice may be made because of an error capable of correction, the owner of the property being summoned afterwards to record his ownership within the period of thirty days.

ART. 443. The summons shall be made either by means of a notarial instrument or by the holder of the property right applying to the Municipal Judge of the domicile of the owner of the encumbered property, with a petition prepared on stamped paper, requesting that the latter be ordered within the period of thirty days, computed from the day following the notification, to record the ownership of the property, warning him that, should he not do so, or should within said period the record requested be not objected to, it shall be entered as may be proper.

The owner of the encumbered estate can not object to said record without requesting at the same time the record of ownership with the presentation of the proper title, or a certificate stating that contradictory proceedings had been instituted by him for the judicial declaration of said ownership.

The request, with the decree and the proceedings, shall be returned to the person who made it.

If the owner of the property has no known domicile, or his whereabouts are unknown, he shall be cited in the manner prescribed in rule No. 5 of Article 391 of the law.

ART. 444. If the thirty days elapse without the owner of the encumbered property having objected to the record, requesting at the same time that of ownership, in the manner and with the requisites prescribed by the second paragraph of the preceding article, the person who has the property right in his favor may present the documents required to make the record, or may apply to the Judge where the files

exist in which they are contained, so that a copy thereof may be ordered made, after the citation of the owner of the encumbered property, and that they be delivered to the petitioner; in the absence of said documents he may demand the ownership or possession of the owner of the realty, by any of the means established for the purpose in Title XIV of the law.

ART. 445. After any of the foregoing documents have been presented in the Registry, with the one showing that the owner has been summoned, the Register shall make the entry of presentation, and make the record within the period fixed by Article 56, if no Treasury fees are due for the instrument; but should any be due he shall suspend it until they have been paid.

The summons shall be filed in the Registry, and a certificate thereof shall be given the interested person who may request it.

After the encumbered real property has been recorded the cautionary notice of the property right shall be converted into a definite record.

ART. 446. If a cautionary notice of the instruments referred to has been made, in accordance with article 442, only because of an error capable of correction, the former shall be changed into a definite record, if any of the persons interested request it, provided the titles entered are again presented, and in these or in other documents which are prima facie evidence of the proof required by Article 20 of the law appears, and an examination of the Registry shows, that the ownership is not recorded in favor of any person whatsoever.

ART. 447. If the owner of the encumbered real property objects to the record requested, within the period of thirty days following the summons, presenting the proper title for record, or a certificate stating that contradictory proceedings had been instituted for the judicial declaration of said ownership, the Register shall make a marginal note in the entry of the cautionary notice of the property right, stating that the owner of the real property has objected to it in virtue of any of said acts. The holder of the property right may bring the proper action against the objector, or may request of the Judge of First Instance of the subdistrict in which the real property is situated, that the owner of the latter formulate his complaint within a short period, and if said period passes without its being presented, the conversion of the cautionary notice of the property right into a definite record shall be ordered. After the complaint has been made, a cautionary notice thereof may be ordered, at the request of the person interested.

ART. 448. The costs and expenses caused to obtain the record of the encumbered property shall be defrayed by the owner of the same, and if it is owned by two or more persons, the Register or the person interested who paid them may demand the same of the part owners, there being reserved the right of action of the latter against the others to recover from them the amount to be paid *pro rata*.

TITLE XV.

EFFECTS OF RECORDS CONTAINED IN THE OLD BOOKS AND SUBSTITUTION OF THOSE RENDERED USELESS BY FIRE OR OTHER ACCIDENTS.

ART. 449. In order that the entries of ownership contained in the old books of the Registry, referred to in the first paragraph of Article 397 of the law, may produce with regard to third persons the effects prescribed by the legislation in force at the time of making said entries, it is indispensable that they be transferred to the new books. This transfer must be requested in writing, in accordance with the proceedings prescribed in the following articles, and may be requested at any time. If the transfer is not made they shall continue to be effective, although not against third persons, according to the provisions contained in the first paragraph of Article 397, but only between the persons interested, and notwithstanding that they do not contain some of the requisites which, under penalty of nullity, are required by Articles 9 to 13 of the law, in accordance with the last paragraph of said Article 397.

Entries which are not of ownership, referred to in the second paragraph of Article 397 of the law, must be transferred in order to prejudice third persons, within the period of one year, computed from the date of the promulgation of the law; this transfer shall be requested in writing, within said period, in accordance with the following articles, having all its effects from the date of its entry in the old books, although the transfer is made subsequently, provided the request has been presented within the year mentioned.

On the day following the close of the year referred to in the preceding paragraph, Registers of property shall forward to the proper delegated Judges a statement of the requests, made up to the day previous for the transfer of records contained in the old books, which transfer had not as yet been made on said day, stating the names of the petitioners and the rights which they desire to record. The delegated Judges shall send said statements on the same day to the Presidents of Audiencias, who shall forward to the Division a certified copy of all of them within the following month, the originals being filed in the Government offices.

The entries referred to in the second paragraph of this article shall also be effective between the parties, although not transferred to the new books, in accordance with the last paragraph of Article 397 of the law.

ART. 450. All the persons who have in their favor records in the old Registries, even when they lack some of the requisites prescribed by Articles 9 to 13 of the law, may request that they be transferred to the new Registries.

The Register shall add thereto, immediately after the entry transferred, the details lacking, taking them from the new instrument presented to him, should they appear therein, and otherwise from a memorandum required by him for this purpose, made in conformity and signed by all the persons interested in the record.

This memorandum shall remain on file in the Registry.

For the purposes of this article, the persons who took part in the instrument or contract, which is the subject of the record, shall be considered as an interested party, and the person to whom said instrument or contract reserves some property right, shall be considered to be a third party.

Said addition shall be made immediately after the last words of the record transferred, in the following terms:

I herby certify that the preceding entry, lacking the details required by the law, I add them in accordance with the instrument of ———, which is now presented on the part of A, or with the memorandum which he and B have delivered to me, signed in conformity by both, in the following terms: (Here the details added; and afterwards it conforms, etc.)

ART. 451. To add the transfer of the old record in the case mentioned in the preceding article, the documents containing the details to be added shall be presented, and, in their absence, the memorandum prescribed in said article, signed by the petitioner.

ART. 452. When the details to be added to the transfer of an agricultural estate refer to its limits or bounds by other estates, which do not appear in documents which are prima facie evidence, the owners of the abutting estates shall sign their conformity with the memorandum, which, in default thereof, must be presented to request the addition.

The Register shall assure himself of the authenticity of the signatures, and of the identity of the persons who authorized said memoranda.

The additional memorandum mentioned in the first paragraph of this article should only be demanded when the addition can not be made by means of other instruments, inventories, certificates, or any kind of public documents in which the facts necessary for the purpose are contained.

ART. 453. The records made in the old books which have not been transferred to the new ones may be canceled by means of marginal notes opposite the same.

If they have been transferred to the new books, the cancellation shall be made in accordance with the provisions contained in Title IV of the law, and a memorandum shall be made in the entry of the old book, stating the cancellation and the book and folio in which it may be found.

ART. 454. If the record made in the old books to be canceled by the marginal note mentioned in the preceding article is that of a property right, and the record of ownership of the estate encumbered by said right is also contained in the old books without having been transferred to the new books, the memorandum of the cancellation must be

made in the margin of the entry of ownership and in the margin of that of the property right, if they are separate.

If the record of ownership of the encumbered estate has been made in the new books of the Registry, that of the property right being in those of the old ones, the cancellation may be made immediately following said record of ownership, stating in a single entry the existence of the property right and its cancellation, without prejudice to making in the old book the memorandum prescribed in the second paragraph of the foregoing article.

In case the record of the ownership of the encumbered estate has not been made either in the old books or in the new ones, and that of the property right which is the subject of the cancellation appears in the former, a marginal note shall be made opposite the latter, which shall produce the effects of a cautionary notice, until the record of ownership is made.

ART. 455. In all records, cautionary notices, or cancellations made in the new books, of an estate or property right recorded in any manner whatsoever in the old books, the number, folio, and name of the book containing said entry shall be cited.

The entries made in the indices of the new books relating to estates or rights recorded in the old ones shall contain the citation mentioned in the foregoing paragraph, besides the one referring to the new books.

ART. 456. For the effects of the Mortgage Law and these Regulations, by "old books of Registries" there shall be understood those kept prior to May 1, 1880, in the Antilles, and December 1, 1889, in the Philippines, and "new books," the one ssubsequent to said dates.

ART. 457. When the persons interested request the record of their instruments, in accordance with the provisions contained in Articles 398 et seq. of the law, they shall annex to the documents the receipt for the fees which should have been paid when the first record was made, and which was to have remained in their possession. If both copies of the receipt which was issued in conformity with the provisions contained in Article 248 of the law have been lost or mislaid, the person interested shall annex a certificate of the Treasury Department, proving that the fees for the instrument or contract which it is desired to record anew have been paid.

ART. 458. With the certificate or receipt they shall present a verbatim copy of these documents signed by the interested persons themselves, or by the person presenting it, or by a witness, should the latter not be able to sign.

ART. 459. The Register shall compare the original with the copy, and if he finds it correct he shall approve it with his surname, and after being stamped with the stamp of the Register he shall file it in the place of the original receipt.

ART. 460. On the receipt or certificate presented by the person interested, the Register who retains possession of the copy in the manner stated shall make a memorandum, stating that this has been done,

with the formalities of his surname and the stamp mentioned in the preceding article.

ART. 461. When the document which is to be the subject of the new record includes one or more estates situated within the jurisdiction of several Registries, in presenting to each one of the Registers the receipt or certificate, a copy thereof shall also be presented, and the other formalities prescribed by the preceding articles shall be observed.

ART. 462. In case of the destruction or loss of the duplicates or authenticated copies of the receipts, which Registers must keep for the purpose of said Article 248 of the law, without the records of the instruments or contracts referred to therein having disappeared, they must request of the Treasury offices a certified statement, showing the amounts paid by reason of the tax imposed at the proper time on said instruments or contracts, said statement being filed in the Registry.

PROVISIONAL ARTICLES.

1. The class and bond actually assigned to Registries of property of the Colonies shall continue, provisionally, in force, until a definite classification is made, from which date the periods stated in Article 1 of these Regulations shall be computed. Registers of the fourth class shall have the rank of the third class, in accordance with provisional Article 2 of the law, retaining, however, the same bonds.

Registries.

	Bonds.
FIRST CLASS.	*Pesos.*
Albay	2,000
Batangas	Idem.
Bulacán	Idem.
Camarines S	Idem.
Cárdenas	10,000
Cebú	2,000
Habana	15,000
Ilocos N	2,000
Ilocos S	Idem.
Iloilo	Idem.
Laguna	Idem.
Manila N	Idem.
Manila S	Idem.
Matanzas	10,000
Pampanga	2,000
Pangasinán	Idem.
Pinar del Río	10,000
Ponce	2,500
Tayábas	2,000
San Juan Bautista	2,500
SECOND CLASS.	
Arecibo	1,000
Bejucal	4,000
Cienfuegos	8,000
Cavite	1,500

Registries—Continued.

	Bonds.
SECOND CLASS—continued.	*Pesos.*
Capiz	Idem.
Guanajay	4,000
Humacao	1,500
Mayagüez	Idem.
Negros	Idem.
Nueva Ecija	Idem.
Puerto Príncipe	8,000
Sagua la Grande	5,000
San Germán	1,500
Santa Clara	8,000
Santiago de Cuba	Idem.
Trinidad	4,000
Unión	1,500
THIRD CLASS.	
Abra	1,000
Aguadilla	800
Alfonso XII	1,000
Antique	Idem.
Baraçoa	Idem.
Barotac Viejo	Idem.
Bataan	Idem.
Batanes	Idem.
Bayamo	Idem.
Bohol	Idem.
Cagayán	Idem.
Caguas	800
Calamianes	1,000
Camarines N	Idem.
Colón	2,000
Guanabacoa	3,000
Guayama	800
Güines	2,000
Holguín	Idem.
Isabela	1,000
Jaruco	Idem.
Leyte	Idem.
Manzanillo	Idem.
Marianas	Idem.
Mindoro	Idem.
Misamis	1,000
Nueva Vizcaya	Idem.
Samar	Idem.
San Antonio de los Baños	2,000
San Cristóbal	1,000
San Juan de los Remedios	3,000
Sancti Spiritus	Idem.
Surigao	1,000
Tarlac	Idem.
Zambales	Idem.
Zamboanga	Idem.

2. On the day on which the law goes into operation the three books of rank for the provision of Registries of property which were kept in the General Supervising Office of Grace and Justice of the Colonial Department shall be closed, one for all the Colonial provinces being opened in their stead. The first Register of each class, of whose vacancy the Registry and Notarial Division has knowledge, after said day, to

whom the last vacancy of the class was due, shall be announced, no matter in what province of the Colonies it occurred.

3. The questions relating to public offices conferred by the Crown in the Colonial provinces shall continue under the charge of the Registry and Notarial Division.

4. For the record of estates known by the name of "*Haciendas comuneras*" in the Island of Cuba, until a law is promulgated to facilitate and encourage the survey, division, and award, the following rules shall be observed, besides the precepts established in these Regulations:

First. Any of the tenants in common or participants may request this record who proves that he has resided in the estate for five years and that he possess cultivated or surveyed land therein. It may also be requested by persons who have in their possession, legitimately, the original title of concession of the estate, or by those who prove they have an interest in the same amounting at least to one-sixth.

Second. The person interested shall present the title or document on which he bases his right and a certified copy of the original concession of the gift or grant, with the names of the inclosure, ranch, farm, or lot.

Third. To said documents shall be annexed a sworn statement, signed by the person himself or by a person delegated at his request, describing the estate and giving the names and residence of the tenants in common or parties in interest in the estate, with the number of "ares" or caballerías or actual value which each one owns in the tenancy in common.

Fourth. If the person requesting the record does not know the name, residence, or interest of any of the tenants in common or part owners, he shall state this fact in the sworn statement mentioned in the preceding rule.

Fifth. The Register, in view of the documents presented, and of the statement prepared in the manner prescribed in the third rule, shall notify the owners in common of the estate of the request for the record. Those who might be dissatisfied with the contents of said statement shall appeal within the period of thirty days, if they reside in the Island, or have any persons there who represent them, and within the period of ninety days if they reside outside thereof and are not represented, to the Municipal Judge of the District in which the estate is situated, in case there are no prior lis pendens affecting the ownership or division of the same. The part owner who objects shall bring the proper action, in an oral trial, against the person who requested the record, no matter where the domicile of the latter may be, in order that in said trial, and after the citation of all of the persons mentioned in the sworn statement, and whose residences are known, the questions referring to the actual value of the part which belongs to each part owner may be decided. Said persons shall be the only ones who may prevent, in the manner indicated, the record on behalf of the part owners.

Sixth. If the sworn statement should be sufficient in the manner prescribed in the fourth rule, the Register shall make the notifications required by the preceding rules to the parties in interest whose residences are known, and to the rest by means of advertisements and posters, fixed for thirty days on the doors of the Municipal building, on those of the parochial church to which the estate belongs, and those of the office of the Registry, and they shall also be published in the "Gaceta" and in one of the newspapers of the locality.

Seventh. After the period mentioned has passed, without the Register, Municipal Judge, or Judicial authority before whom the suit was pending having received the proper communication or statement that the oral trial referred to in the fifth rule has been instituted, the record requested shall be made. When there are any unidentified or absent parties in interest, or the Register considers it necessary for good reasons, before making the record, he shall allow a period of ninety working days to elapse from the day following the one on which the last announcement was published.

Eighth. With the final judgment issued in the oral trial, and which shall be filed in the Registry, if the objection made by a tenant in common is overruled, the record shall be made.

Ninth. The Register shall retain, in all cases, in the files of his office, the sworn statement, with the proofs of the citations which may have been made.

The person who has a certain number of "ares" surveyed and cultivated within the limits of an estate owned by tenants in common, or "caballerías" of land with an inhabited house, may request their record in writing, presenting any legitimate instrument of acquisition which fixes exact bounds, and the receipts which prove the payment of the tax on the realty as owner thereof. The Register shall advise the other tenants in common of the petition, in the manner prescribed in the fifth and sixth rules of this article, and if within the periods mentioned in the same, said tenants in common do not show that they have instituted the proper proceedings, the Register shall make the record.

For the notifications treated of in this article the Register shall use stamped paper.

A party in interest in an estate owned by tenants in common who considers himself entitled to the right to record the possession, shall proceed in accordance with the provisions contained in Articles 390 and 391 of the law, and 440 of these Regulations.

5. In order that the persons interested, in the Island of Cuba, referred to in provisional Article 1 of the law, may make effective the proper rights within the period of one year granted them thereby, the provisions of the mortgage law for Cuba shall be considered in force with regard to them, referred to in said article and in the corresponding ones of the Regulations for its execution.

6. In the Island of Cuba, during the period of one year fixed in the first of the provisional articles of the law, the proceedings treated of

in Articles 168 et seq. of these Regulations must be suspended, in whatever condition they may be, by the interposition, in a legal manner, of the claim of a third person to ownership, or of one having a better claim; and against the decisions issued in this case by the Judge, the ordinary remedies may be applied. After said period has elapsed, Article 175 of these Regulations shall be fully observed.

7. To complete the statements and other work relating to the books of the abolished "Anotadurías" or "Receptorías" of mortgages of the Philippines, referred to in the Royal Decree of October 11, 1889, and the Royal Order of March 16, 1891, these provisions are declared in force for the period of one year, which can not be extended, computed from the date of the promulgation of the law, the provisions relating to cautionary notices treated of in Article 32 of said Royal Decree, being also understood continued for the same period, which can not be extended.

8. The subsidy to which Registers have a right, according to additional Article 4 of the law, shall be paid them at the end of each quarter. The Delegate, when he makes his quarterly inspection, shall examine the stubs of the book referred to in Article 429 of these Regulations; he shall verify, by examining the entries to which they refer, the correctness of the amounts which appear therefrom to have been collected by the Register; he shall state in the memorandum of the inspection the total of the fees collected by the Register during the quarter, and, after making the proper balance, he shall order that there be credited to the Register, if it is proper, the part of the corresponding subsidy, forwarding the proper order for this purpose to the Treasury of the province, within the third day, so that it may make the payment. In the memorandum of the inspection the amount which the Delegate ordered credited by way of a subsidy shall also be stated.

Approved by His Majesty.

Madrid, July 18, 1893.

ANTONIO MAURA.

I.

Entry of Presentation of an Instrument presented by the Interested Party in Person.

MARGINAL NOTES.

The instrument to which the adjoining entry refers is recorded in volume —— of the Municipality of ——, folio ——, entry ——, estate ——.
Date.
Surname of the Register.
(Signature of the person who presents the instrument, and in case he does not know how to write or is unable to sign, at his request, the signature of a witness.)

Ordinal number.

12.

Mr. J. P., a resident of R., presents to-day at —— p. m. an instrument, constituting a loan with a mortgage, executed in this city, on the —— day of ——, before the notary, Mr. A., by which Mr. L. M. constitutes in favor of Mr. J. P. a mortgage in the sum of —— pesos upon house number —— on —— street in this city.

Humacao, the —— day of ——.

(*Signature of the Register.*)

Fees: 75 centavos, No. 1 of the Schedule.

II.

Entry of Presentation of an Instrument presented by an Agent.

MARGINAL NOTES.

The cautionary notice to which the adjoining entry refers is suspended, as the estate does not appear recorded in favor of Mr. L. B.; and as it is also not recorded in favor of any other person, the note of said suspension is made on folio ——, volume —— of the Municipality of ——, estate ——, letter ——.
Date.
Surname of the Register.

Ordinal number.

2.

Mr. J. R., residing (or domiciled) in this town, as agent of Mr. J. P., residing in ——, presents this day at —— a. m. a mandate issued by Mr. A. S., Judge of the Court of First Instance of this subdistrict, on the —— day of the current month of January, ordering that a cautionary notice on the coffee plantation X, situated in this Municipal district, be made, belonging to Mr. L. B., to secure the sum of —— pesos, which he owes to the said Mr. J. P., —— pesos as interest, and —— as costs and expenses of the suit.

Guanabacoa, the —— day of ——.

(*Signatures.*)

Fees: 75 centavos; No. 1 of the Schedule.

III.

Record in full of an instrument, including two estates, situated in the same municipal district, both mortgaged to secure part of the deferred purchase price.

ESTATE NUMBER ——

MARGINAL NOTES.

The other estate, included in the same instrument, from which the adjoining entry was made, is recorded in the same volume, folio ——, estate ——, first entry.
Date.
Surname of the Register.

The first payment of Five Thousand pesos has been made, as appears from an instrument, acknowledging the payment made in —— the —— day of ——, before the notary, Mr. L. C., and presented in this Registry at —— o'clock in the morning of the —— day of ——, with the number —— folio —— volume —— of the Day Book.
Date.
Surname of the Register.

Fees: 50 centavos; number 6 of the Schedule.

Ordinal number.

1.

Town.—House number ——, on —— Street, in this town. It is bounded: On the right by house number —— of —— Street; in the rear by house number —— of —— Street; and on the left by —— Street. Its superficial area is —— square meters, and it consists of a ground floor with appurtenances to be used for stores, and of a main floor. According to the record made on folio ——, volume —— of the old "Anotaduría" of this town, it appears encumbered with a mortgage of —— pesos, and interest upon said principal at the rate of —— per annum, and also, according to the instrument presented, it is subject to a servitude preventing the increase in height of the building. Mr. L. de P. y R., single, of age, silversmith, residing in this town, acquired said estate by purchase from Mr. J. de L., according to the instrument executed in this town before the notary, Mr. P. G. L., on the —— day of ——, of the year One Thousand Eight Hundred and Thirty, and is selling it now, together with another estate, to Mr. Z. I. M., married, of age, living upon the income of his estates, the consideration of the sale being Fifty Thousand pesos for both estates, of which

he has paid in cash Twenty Thousand pesos in gold and silver coin, the receipt of which has been certified to by the notary, being under the obligation to pay the remaining Thirty Thousand pesos in the following manner and terms: Five Thousand pesos on the twenty-eighth day of February, One Thousand Eight Hundred ——, Ten Thousand pesos on the same day of the year One Thousand Eight Hundred ——, and the remaining Fifteen Thousand pesos on the thirtieth day of December, One Thousand Eight Hundred ——, in gold and silver coin, at the residence of the vendor, both the estates being mortgaged to secure the payment of the unpaid part of the selling price; the estate of this number being appraised at ——— pesos, subject to the payment of Twenty Thousand pesos, with the waiver of any new appraisement or proceedings leading to such new appraisement. Mr. Z. I. M. records his instrument of purchase, the contract of purchase having been entered into upon the following condition, which is the only one affecting the rights of the grantee: "Fifth. Mr. L. de P. y R. reserves the right to live in and use the ground-floor premises, No. 5, for two years without being dispossessed, and rent free." The other estate included in the same instrument is recorded as stated in the marginal note of this entry. All the foregoing appears in the above-mentioned instrument, the deed of sale, executed in ——, on the second day of May One Thousand Eight Hundred ——, before the notary Mr. G. R., presented in this Registry at —— o'clock in the morning, on the —— day o. July last passed, according to entry number ——, folio ——, volume —— of the Day Book ——. And all this being in conformity with the instruments, to which I refer, I sign these presents at Iloilo, this —— day of ———, 18—.

(*Full signature of the Register.*)

Fees: 20 pesos, number 7 of the Schedule.

REMARKS.

(1) In case the estate should be already recorded in favor of the vendor, and there should only be some difference in the boundaries or in some other details, the entry shall begin in the following terms:

"Town —, House No. ——, the description of which appears in the preceding record, is in conformity with the description contained in the instrument presented, with the only difference that, according to the said instrument, it is bounded in the rear by ———, which now stands in the place where formerly was house number —— of ——— Street." After having stated the incumbrances, there shall be added: "Mr. B. de P. y R. is the owner of this estate, according to the preceding record, and sells it, together with another estate," etc.

(2) In case the vendor should desire that his mortgage rights be recorded in the same entry, he shall ask the Register to do so on presenting the instrument, in which case the paragraph relating to the record shall be worded in the following manner:

"Mr. Z. I. M. records the ownership of the estate acquired by purchase, and Mr. L. de P. y R. his mortgage right upon the estate of this number, said contract having been entered into," etc.

(3) In the marginal note of the entry of presentation and at the bottom of the instrument there shall be clearly stated whether the sale only is to be recorded, or the sale and the mortgage.

IV.

Brief first record of an estate acquired before the 1st of May, 1880, together with another estate situated in the same municipal district.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
(The same as the first note of form No. III.)	1.	Rural.—Coffee plantation, called "Esperanza," situated in the district of ———. It is bounded on the North by the sugar estate of Mr. J. M.; on the East by the River ———; on the South by the road leading from ——— to ———, and on the West by the fruit orchard belonging to the Agricultural Development Company. It measures —— "cuerdas," equivalent to —— hectares, —— ares, —— centiares. It contains Eight Thousand coffee plants, two Hundred cocoanut palms, and other fruit trees, all the appurtenances common to estates of the same class, one two-story dwelling house, one one-story house, and three huts. It does not appear to be charged with any incumbrances. Mr. F. B. y T., of this city, proves that he was the owner of this plantation prior to the 1st of May, 1880, by inheritance from his father, who died on the —— day of ———, under the will executed in said city on the —— day of ———, before the notary, Mr. B. C., this plantation being awarded to him for the sum of

Ten Thousand pesos in satisfaction of his part of said inheritance, according to the instrument of adjudication, executed in ———, on the —— day of ———, and he sells it, together with another estate, to Mr. D. A. y B., residing in ———, for Twelve Thousand pesos, for this estate alone, as appears from the instrument of the sale executed in ———, on the —— day of ——— of the current year, before the notary, Mr. L. A., and, in accordance to what is more fully stated in the record ——, estate number ——, folio —— of this volume, Mr. D. A. B. records the ownership of the estate of this number, which he acquired by deed of purchase.

San Juan de Puerto Rico, this —— day of ———, 18—.

(*Full signature of the Register.*)

Fees: 14 pesos, number 7 of the Schedule.

REMARKS.

(1) In case the estate be already recorded, and the description in the deed be identical with the description in the record, there shall be only entered:

"Rural.—Coffee plantation, called 'Esperanza,' the description of which is embodied in the previous entry, identical with the description made in the instrument now presented. It does not appear charged with any incumbrances. Mr. F. B. y T., a resident of this city, is the owner of this estate, according to the preceding record, and sells it, together with another estate, to Mr. D. A. y B., a resident of ———," etc.

(2) In case there be any incumbrances, they shall be stated in the following manner:

"This estate is encumbered with a mortgage and with an annuity (censo), as appears from the first part of the preceding record."

V.

Record of acquisition by will.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The other ten estates included in the instrument from which this entry was taken are recorded in the place indicated in the marginal note of entry number ——, folio ——, volume ——, of the Day Book. (*Date and surname.*)	4.	Rural.—Meadow land, the description of which appears in the first entry of this number, identical with the description made in the instrument now presented. According to the Registry, it is not charged with incumbrances of any kind. Mr. A., —— years old, widower, farmer, and a resident of ———, acquired this estate in the manner stated in said first record, and he having died on the —— day of ——, leaving a nuncupative will, in which he constituted as his only and universal heirs his minor children, Mr. B., Mr. C., and Miss D., together with other provisions relating to his funeral, to charitable bequests, and to the appointment of guardians and executors. The proper testamentary proceedings being instituted before the Judge of First Instance, and after the division having been made by mutual agreement between said executors and the guardians representing the minors, after they had been officially confirmed in their duties, the Court has granted the decree, dated —— of ———, approving the measures adopted and ordering a judicial record of them as well as the issue of copies of it to each person interested in his respective share of the inheritance. In said division the estate of this number has been awarded as a legacy to Mr. B., —— years of age, single, and domiciled in ———, appraised at Two Thousand pesos, under the conditions resulting from the opinions and declarations of the appraising executors and the partitioners, accepted by the interested parties: First, the right of way over this estate is granted in favor of the adjoining farm awarded to Miss D———, which right of way shall cross the meadow longitudinally from East to West, namely, from the common boundary between the dominant and servient farms up to the high road of ———, said right of way to continue until the owners of both estates by mutual agreement arrange otherwise; second, in order to fulfill the obligation imposed by the testator upon his children to have ten masses said every year for the repose of his soul during the life of his heirs, this estate being the proportional share of Mr. B., is encumbered for the amount of three masses, said masses to be said annually in the chapel of ———, said encumbrance to be in force during the life of Mr. B., unless he should wish to free said estate from this burden by reason of an exchange, sale, or any other means of alienating said estate for a consideration; for in such cases he could do so with the permission of the Bishop of his Diocese, substituting said burden by a similar one, and under the same

conditions as those contained in this covenant, upon another unencumbered estate belonging to him. Mr. B. records the ownership of this estate, acquired by the testamentary heirship, upon the conditions as stated, and of ten other estates recorded as indicated in the marginal note. All the above is included in the inventory, appraisement, and division of the property executed before the notary of ——, Mr. H., under the date of —— of ——, of which the first copy of the inheritance in favor of this party was filed in the Registry at 10.15 a. m., on the 14th day of the present month, according to what is stated in entry number ——, folio ——, volume —— of the Day Book. And all this being in conformity with the documents, to which I refer, I sign this entry in Matanzas this —— day of ——, 18—.

(*Full signature of the Register.*)

Fees: 6 pesos, number 7 of the Schedule.

VI.

Record in favor of the heirs of an intestate relating to an estate which had been recorded in the Registry in the name of the deceased.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.
Annulment claimed by Mr. F. in the Court of First Instance of ——, ——, Office of the Clerk of the Court. (*Date and surname.*) The adjoining record number 2 is canceled by the following entry number 3, folio ——, of this volume. (*Date and surname.*)	2.

Town.—House No. 7, on —— Street, the description of which is to be found in the preceding record. It is free from incumbrances. Value, Five Thousand pesos. Mr. A. was the owner of the estate of this number by purchase, according to the statement in the preceding record; and, having died on the —— day of ——, without any evidence tending to show that he had left a will, Mr. B. and Mr. C., residents of ——, of age, and lawyers by occupation, applied to the Court of First Instance of ——, asking to be declared heirs of the intestate, according to the proceedings established in section 2, title 9, book 2, of the Law of Civil Procedure. Upon the termination of the proceedings provided for in the above-mentioned section, and after the hearing and consent of the Department of Public Prosecution, Hon. D. ——, the Judge of the Court of First Instance of —— and its subdistrict, has issued on the —— day of ——, through the Clerk of the Court, Mr. ——, the decree, by virtue of which Mr. B. and Mr. C., the nephews by blood of the deceased, have been declared heirs of the deceased intestate, Mr. A., share and share alike, without prejudice to a third party, who may have a better right. Mr. B. and Mr. C. record the acquisition of the ownership of said estate by rights of intestate inheritance, without prejudice to third parties, who may have a better right. All the above appears from the copy of the said decree, issued on the —— day of ——, by Mr. ——, the Clerk of the Court of First Instance of the said town, which was presented ——, etc. This record, being in conformity with the documents to which I refer, I sign it in the City of Manila, this —— day of ——, 18—.

(*Full signature of the Register.*)

Fees: 10 pesos, number 7 of the Schedule.

VII.

Record of a final judgment, annulling the preceding record, and declaring the ownership in favor of another person.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.
The other two estates included in the instrument, from which this record is taken, are registered in folio —— of volume —— of the Municipality of ——, estate number ——, fifth records. (*Date and surname.*)	3.

Town.—House, the description of which appears from the first record of this number, and is identical with the description in the instrument now presented. It is free of incumbrances. This estate was awarded to Mr. B. and Mr. C. upon the death of Mr. A., according to what is stated in the preceding record number two. Claimed by Mr. F., —— years of age, single, a merchant by occupation, and a resident of ——, before the Court of First Instance of ——, demanding the annulment of the declaration of heirship, by virtue of which said award was made, as well as the annulment of the other matters, which as a consequence of said decla-

ration have been performed and approved after the death of Mr. A.; the suit passed through all the stages, the final judgment having been obtained from the Supreme Court, declaring the annulment of the abovesaid declaration, and declaring null and without any legal effect all the acts which Mr. B. and Mr. C. as heirs of Mr. A. performed, amongst which are the records of the Registries of property; in the same manner the right belonging to Mr. F., the plaintiff, in his capacity of heir, is declared, according to the sealed will executed by the deceased on the —— day of ———, which will was given the legal force of public instruments in virtue of the decree of the ——— Court, made on the —— day of ———. Mr. A. died without any legitimate heirs, on the —— day of ———, and has constituted in the abovementioned sealed will his nephew, Mr. F., as his universal heir to all his property, with other particulars which do not limit in any way the right that is being recorded. By virtue of the foregoing statement the preceding record, number two, is canceled, and Mr. F. records his ownership, acquired by testamentary heirship, of this estate and of two other estates, recorded in the place indicated in the marginal note. All the above appears from the final judgment of ———, issued by the Supreme Court in cassation, taken to said Court by Mr. C. from the decision in an ordinary civil action demanding the annulment of the declaration of heirship, instituted by said Mr. F. in the Court of ———, which final judgment is incorporated in the mandate of said Court, which has been issued from the said Court in duplicate through the actuary, Mr. X., under the date of —— day of ———; and will certified to by the notary, Mr. P., on the —— day of ———, the abovesaid mandates and the first copy of the instrument having been presented at 11.25 a. m. on the —— day of ———, according to what is stated in entry number —— folio ——, volume —— of the Day Book, one of the mandates having been filed, under number ——, in the proper package. And all being in conformity, etc.

VIII.

Entry of ownership by virtue of judicial proceedings.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
	1.	Town.—House designated by number —— of ——— Street, in the town of ———, block number ——, its superficial area being ——, equivalent to —— ares. It is bounded on the right by house number ——, belonging to Mr. ———; on the left by house number ——, the property of Mr. ———; and on the rear by ——— Street; its value is —— pesos. This estate is only encumbered with an annuity (censo) of —— pesos of principal and —— pesos of annuity in favor of ———, which payments fall due each —— day of ——— of every year; said annuity (censo) not having been recorded. Mr. L., —— years of age, landowner, a resident of ———, has applied to the Court of First Instance of ———, stating that he has acquired the ownership of said house by purchase, by virtue of a verbal contract entered into with his neighbor, A., on the ———, and, desiring to record his ownership, he asked that after due process of law it be declared that he has proven said ownership. Having heard the Department of Public Prosecution, and having summoned the vendor, A., as well as the owners of the adjoining estates, said action at law proceeded in the manner provided for by art. 395 of the Mortgage Law, judgment being rendered by the said Court on the —— of ———, through ———, which became final and by which it was declared that Mr. L. is the owner of the aforesaid house; by virtue of which he records the ownership of this estate without any conditions whatsoever. The above appears in the copy of the judgment in the above said action, which copy has been presented in this Registry on the —— day of ———, at —— o'clock in the ——, according to entry number ——. folio —— of the Day Book. And all being in conformity with the documents to which I refer, I sign this entry in Arecibo, this —— day of ———, 18—.

(*Full signature and fees.*)

IX.

Record of a Judicial Sale Instrument.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
——	4.	Town.—House ——. (For the description of the property see the preceding forms.) This property is charged with the incumbrances which appear in the second and third records of this number, folio ——, volume ——, of the Municipality of this city. Mr. A. I., a resident of ———, —— years of age, widower, planter, acquired said estate as an

legacy from his father, Mr. L. P., according to the first record. An attachment of this house having been issued in certain proceedings in a summary action, instituted against Mr. A. I., the owner of the same, as appears from notice, letter A, of this estate, its sale at public auction was decreed, and as soon as it was issued the appraisement of the estate was ordered and the proper notices of said auction were posted for twenty days. At the public auction it was sold to the highest bidder, Mr. M. N., a resident of ——, —— years of age, married, and a merchant by occupation, for the sum of —— pesos; which sale was approved by the Court, said Court ordering the execution of the proper deed to the purchaser and the cancellation of the notice of attachment, letter A, after the payment of the amount of said bid. The debtor, owner of this estate, not having come forth to execute the proper bill of sale, the Court ordered that it should be officially executed on the —— day of ——, One Thousand ——, before the notary, Mr. N. P. In fulfillment of this order, Hon. ——, single, —— years of age, the Judge of First Instance of ——, by public instrument executed in the same city on the fifteenth day of October, One Thousand ——, before the notary, Mr. ——, sells the estate of this number, in the name of and by reason of the nonappearance of Mr. A. I., to the said Mr. M. N., for the consideration of Ten Thousand pesos, which amount was deposited in the Court before the execution of the instrument. The purchaser, Mr. M. N., records the acquisition of this estate by deed of purchase. All the above appears from the bill of sale, executed on —— (as in the preceding forms).

Havana, —— of ——, 18—.

(*Full signature of the Register.*)

Fees: 12.50 pesos, number 7 of the Schedule.

X.

Full record of a title of possession, including several estates situated in the same municipal district.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The other five estates included in the same instrument, from which the adjoining entry was taken, are recorded in the folios and volumes noted on the margin of entry number ——, folio ——, volume —— of the Day Book. (*Date and surname.*)	1.	Rural.—Meadow land, called ——, situated in the district of ——, it is bounded by ——, etc., having an area of ——, equal to ——. It is not charged with any incumbrances. Its value is Two Hundred pesos. Mr. A., —— years of age, married, landowner, resident of ——, applied to the Court of ——, petitioning for the legalization of his possession of said estate, which he owned since —— (*such a date*), upon which date he inherited it from his father, Mr. B., no written title to the property having been executed. The petition having been admitted, the owners of the contiguous estates were summoned, who did not testify to anything against the right of Mr. A., and Messrs. C. and D., neighbors and landowners of said town, testified as witnesses, and stated that Mr. A. did to their own knowledge possess said meadow land for —— years. The proceedings having been communicated to the Department of Public Prosecution, and the latter having thought that, according to its opinion, all the formalities of the law had been observed, the decree of approval was issued on the —— (*such a date*). In consequence thereof, having searched the Registry and not having found therein any entry contradicting the above, I record the possession of the estate in favor of Mr. A., without prejudice to a third party, who may have a better right to its ownership. In the proceedings there are included five other estates, which are recorded where the marginal note of this entry indicates. All the above appears from the proceedings had in the Court —— of the ——, before the Clerk of the Court, Mr. H., which document has been filed in this Registry —— (*such hour and day*), according to entry number ——, volume ——, folio —— of the Day Book, the proceedings having been filed under number —— in package ——. And, being in conformity with the documents, to which I refer, I sign this entry in Cagayán, this —— day of ——, 18—.

(*Full signature of the Register.*)

Fees: 62 centavos, additional art. 6 of the Law.

XI.

Entry of possession of an estate at the instance of a person having an unrecorded property right thereon.

ESTATE NUMBER ——.

MARGINAL NOTES. —— | Ordinal number. 1.

Town.—House designated with number —— of ——— street, of this city, measuring —— meters in front, —— on each side, —— in the rear, which make —— square meters of superficial area; it is bounded on the right by house number ——, belonging to Mr. M., on its left by house number ——, of Mr. J., and in the rear by the ——— street. This house is encumbered with an unrecorded annuity (censo) of —— pesos of principal in favor of Mr. E., and with —— pesos of annual feudal fees, as appears from the preceding notice, letter A. On the —— day of ——— Mr. E. has made, through Mr. R., the notary of ———, a demand upon Mr. F.. that the latter should, within thirty days, record in his name the ownership or possession of the said house; this not having been done and at the same time there not having been any opposition to the said demand, Mr. E. applied to the ——— Court of the ———, petitioning that the possession belonging to Mr. E. since ——— (*such a date*) be legalized, as upon the above said date he had acquired said estate from his mother, Mrs. R., without any written title. The petition having been admitted, the owners of the contiguous houses were summoned and did not testify to anything against the right of Mr. F., Messrs. G. and H., neighbors, landowners of the town, where the estate is situated, testified that the said interested party, to their own knowledge, had possession of this house for —— years.

From the certificate issued by the Municipality of ———, upon the application of Mr. E., signed and sealed by the Alcalde, Mr. N., by the syndic, Mr. J., and by the secretary, Mr. P., it may be seen that, according to the assessment list kept in that town, Mr. F. pays —— pesos of taxes on said estate, as its owner. After hearing the opinion of the Department of Public Prosecution, which stated that in its judgment all the formalities of the law have been complied with, the Court has issued the decree of approval on the ——— (*such a date*). In consequence whereof, having made a search in the Registry, and not having found in it any entry contradictory to the above stated, I record the possession of said estate in favor of Mr. F., without prejudice to a third party who may have a better right to the estate. Thus it is stated in the writ of requisition of the proceedings had in the ——— Court of ———, before the clerk, Mr. N., and in the above-mentioned certificate, which documents have been filed in this Registry on ——— (*day and the hour*), as per entry number ——, volume ——, of the Day Book, said originals having been filed with numbers —— (*whatever they may be*) in the proper package. And all being in conformity with the documents to which I refer, I record this entry and sign it at Mayagüez, this —— day of ———, 18—.

(*Full signature and fees.*)

XII.

Record of a legacy consisting of an annuity (censo).

ESTATE NUMBER ——.

MARGINAL NOTES. —— | Ordinal number. 4.

Town.—House number ——, the description of which is found in the preceding entry. It is encumbered with a transferable annuity (censo consignativo) of —— pesos of principal and —— pesos of interest imposed by Mr. A., in favor of Mr. B., according to the instrument executed on the —— of ——— (*such a date*), said annuity being made dependent upon the condition of payment for —— masses each and every year in ——— Church, according to the record of this number —— on folio ——, volume ——. There is no evidence of other incumbrances. Mrs. F., the wife of Mr. E., of age, who acquired said annuity by gift from her brother, Mr. B., as per —— record of this number, folio ——, volume ——, died on the ——— (*such a date*), and by her will, executed on the —— of ——— before the Notary, Mr. D., she has bequeathed said annuity to Mr. H. (*of such a status and residence*) upon the following conditions (verbatim): "First, that in case Mrs. H. shall have issue she shall have no right to alienate said annuity during her life, in order that it may go over in its entirety to

her children; and, second, that out of its income there shall be paid a life annuity of ——— to Mr. I. each and every year." In virtue whereof Mrs. H. records the acquisition of said annuity, as a legacy, upon the aforesaid conditions. All the above appears from the said will, and the schedule of Mrs. H.'s share of the estate issued in the judicial partition of the property left at the death of Mrs. E., approved by ——— through ——— on the —— day of ———, in the year of our Lord ———, which documents have been filed in this Registry on the —— day ———, at twelve o'clock in the morning, according to entry number ——, folio ——, volume —— of the Day Book. And it being in conformity with the documents to which I refer, I sign this entry in San Cristóbal, this —— day of ———, 18—.

(*Full signature and fees.*)

XIII.

Full record of an instrument constituting a voluntary mortgage upon several estates situated in the same municipal district.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The three other estates included in the same instrument, from which the adjoining record was taken, are recorded in the folios and volumes mentioned on the margin of entry number ——, folio ——, volume ——, of the Day Book. (*Date and surname.*)	2	Rural Plantation ———, the description appears in the preceding record, and is identical with the description made in the instrument now presented. Its value is forty thousand pesos. According to the records, this estate does not appear to be charged with any incumbrances, but in the instrument presented there is included the right of way in favor of ——— coffee plantation, belonging to Mr. J. B. y P. Mr. J. R. y O., resident of Madrid, married, of age, merchant, is the owner of this estate, according to the preceding record. Mr. J. G. y P., resident of this city, single, of age, (*trade or profession*), by virtue of a special power of attorney granted to him by the former constitutes a voluntary mortgage upon three other estates, as security for the sum of twenty thousand pesos, which sum Mr. V. D. y P. has loaned him through the medium of the said Mr. J. R. y O., delivering the money at the time of the execution of the instrument, in gold and silver coin, the notary before whom the instrument was acknowledged testifying to the payment of said money; and the distribution of the whole amount of this mortgage among the estates affected by said mortgage having been made, the estate of this number is liable for the sum of six thousand six hundred pesos, in the following manner: Five thousand pesos by reason of the loan, one thousand pesos as interest, and six hundred pesos for expenses and costs that would be incurred in case of a lawsuit, said estate being appraised at ———, waiving any new appraisement, or action with this object in view. Said mortgage was entered into upon the following conditions, the only ones which limit in any way the rights of the owner: "First, the loan is made for a term of four years, running from the date of the execution of the instrument." "Third, Mr. J. R. y O. shall pay to V. D. y P. on the first day of ——— of each and every one of the years 18—, 18—, 18—, and 18—, the sum of two thousand pesos as interest, and shall repay the principal on the —— day of ———, 18—." Mr. V. D. y P. records his mortgage right upon this estate and upon three other estates, recorded in the places indicated in the marginal note. All the above appears in the said instrument of loan secured by mortgage, the power of attorney referred to being incorporated in said instrument, executed in this city on the —— day of ———, 18—, before the notary, Mr. L. L., the first copy of which has been presented in this Registry at —— a. m. in the morning on the —— day of ———, 18—, according to entry of presentation number ——, folio ——, volume —— of the Day Book. All the above being in conformity with the aforesaid document, I sign this in Cavite this —— day of ———, 18—.
The adjoining record number 2 is canceled by the record number ——, folio —— of this volume. (*Date and surname.*)		

(*Full signature of the Register.*)

Fees: Ten pesos, number 7 of the Schedule.

XIV.

Brief record of a Mortgage relating to another estate included in the same instrument.

ESTATE NUMBER ——.

MARGINAL NOTES. — (The same as the preceding form.)

Ordinal number. 2.

Town.—House, the description of which ———. It is not charged with any incumbrances. Mr. J. R. O., resident of Madrid, married, of age, merchant, acquired this estate, as may be seen in the preceding record, being represented by Mr. J. G. P., a resident of this town, single, of age (*trade or profession*), constitutes by the instrument executed in this city on the —— day of ———, before the notary, Mr. L. L., a voluntary mortgage in favor of Mr. V. D. y P. upon this estate as security of the loan made by him upon the conditions stated in the full record —— of estate number ——, folio ——, volume —— of this Registry, the estate of this number being liable for the sum of four thousand pesos of principal, eight hundred pesos for interest, and four hundred pesos more for costs and expenses in case of litigation, said estate being appraised at the sum of ———, waiving appraisement or action with this object in view. Mr. V. D. y P. records his mortgage right upon this estate and upon three other estates recorded according to the indications in the marginal note.

(*Date and surname of the Register.*)

Fees: 9 pesos, number 7 of the Schedule.

XV.

Record of Transfer of Mortgage Rights.

ESTATE NUMBER ——.

MARGINAL NOTES. —

Ordinal number.

Town.—House number ——, the description of which is to be found in the preceding record. According to the second record of this number it appears encumbered with a mortgage. Mr. A., —— years of age, has acquired mortgage rights against Mr. B., upon said house, amounting to —— pesos of principal, the maturity of which, interest, and other particulars are stated in the said second entry, and he does cede and transfer it to Mr. S., —— years of age, for the consideration of —— pesos, which was paid in cash in the presence of the notary, who testifies to the fact of said payment having been made. The debtor was notified of this transfer and was present at its execution, and the contract was drafted with the following conditions which affect the right of the assignee:——— (*verbatim*). By virtue thereof Mr. S. records the said mortgage right upon the above-mentioned conditions. All the above appears from the instrument of transfer of mortgage rights, executed on the ——— (*such a date*), before the notary, Mr. P., the first copy of which has been presented in this Registry on the —— day of ——— at —— o'clock, as per entry number ——, folio ——, volume —— of the Day Book. The above being in conformity with the instrument referred to, I make the present record and sign it in Ponce this —— day of ———, 18—.

(*Full signature and fees.*)

XVI.

Record of Real Property in Favor of the Husband.

MARGINAL NOTES. —

Ordinal number.

Rural.—Sugar estate ———, the description of which, and encumbrances appear in record folio —— of this volume. Mr. A., a resident of ———, widower, —— years of age, acquired said estate, as it appears in the record, and having a daughter named Miss C., single, —— years of age, who engaged herself on (*such a date*) to marry Mr. E., a resident of ———, single (*age and occupation*), decided to constitute an appraised dowry of —— pesos in favor of his said daughter. Amongst the property which constituted the dowry there is the above-mentioned estate, appraised by mutual consent at —— pesos, and delivered to Mr. E., the notary certifying to it, with an appraisement for the purposes of a sale, but with the following conditions (*here there shall be stated the conditions that may have been agreed to in conformity with Art. 193 of the Regulations*). Mr. E. records the ownership of this estate with the above-mentioned conditions, said estate being charged with a legal mortgage in

favor of the said dowry for ———, at which sum it was appraised. All the above appears in the dowry instrument executed in ———, on the —— day of ———, (*such a date*), before the notary, Mr. F., the first copy of which was presented at —— o'clock in the ———, on the —— day of ———, according to entry number ——, folio ——, volume —— of the Day Book. And being in conformity with the document referred to, I issue these presents and sign them, in Bejucal, this —— day of ———, 18—.

XVII.

Another record of an appraised dowry.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.
——	2.

Rural.—Cattle ranch, the description of which in the first record is in conformity with that made in the instrument now presented. There is no evidence of any incumbrances upon it, etc. Miss A., —— years of age, spinster, a resident of ———, acquired this estate from her father, Mr. D., according to the above said first record, and, having entered into marriage on the ——— (*the date*) with Mr. C., of —— years of age, single, a merchant, and resident of ———, delivers said estate to him before the notary, Mr. N., as appraised dowry, for the purpose of which the value of said estate, by mutual agreement between the spouses, has been appraised at —— pesos. Mr. C. records the ownership of this estate, the acquisition of which was by virtue of appraised dowry of his wife, Miss A., according to the laws, and without any special conditions. In compliance with the mortgage law this estate is mortgaged for all its value in favor of the said Miss A. The above appears from the instrument, constitution and delivery of the appraised dowry made by Miss A. and Mr. C. on the ——— (*date*), the first copy of which has been presented, etc. (*Ends like the other entries.*)

XVIII.

Record of a Mortgage to secure an unappraised dowry, and consisting of personal property.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.
The other two estates included in the instrument, from which this record has been taken, are recorded on folio number —— volume —— of this Municipality, record fifth, and folio —— of volume —— of the Municipality of ———, record third. (*Date and surname.*)	4.

Rural.—Farm, the description of which, etc. There is no evidence of this estate being encumbered, etc. Mr. A., —— years of age, etc., acquired said farm by purchase from Mr. B., as it appears by the third record of this number. The said Mr. A. has agreed to marry (or married) on the —— day of ——— Miss P., —— years of age, a spinster, resident of ———; and Mr. G., a resident of ———, the father of Miss P., gives her, as unappraised dowry, and as such has delivered to Mr. A., the notary, Mr. N., certifying to the same, the following dowry, besides several estates, property rights, and personal property, consisting of jewelry to the value of —— pesos; furniture, cattle, and clothing to the value of —— pesos; and lastly, —— pesos in cash. By virtue of said dowry Mr. A. binds himself to restore the same property which has been given to him as unappraised dowry in the condition it may be on the dissolution of the marriage, and failing to do so, to be liable for the amount of the value at which it was appraised in the dowry instrument, as that was the only object of appraising the above-mentioned property; and in consequence of the demand of Mr. G. upon him to secure the restitution of the dowry by means of a legal mortgage, Mr. A. mortgages the estate of this number and two other estates in favor of Miss P., to secure the total amount of —— pesos, at which the above said personal property has been appraised, and in order to meet the possible case of the failure to return some of the above-mentioned dowry property, distributing his liability among the above said three estates, so that the estate of this number is liable in the amount of —— pesos, being appraised at —— pesos, with the waiver of any new appraisal or action having this object in view. Mr. G. accepts the said mortgage, considering it sufficient to cover said liability, and agrees to the distribution of said liability as made. Miss P. records her mortgage right upon this estate in the terms stated, and upon two other estates recorded, as appears by the marginal entry. All of which appears. (*Ends as the record of a voluntary mortgage.*)

XIX.

Record of a Mortgage upon Real Property to be set apart.

ESTATE NUMBER ——.

MARGINAL NOTES.

The other estate, included in the instrument from which this record was taken, had been recorded on folio ——, of volume —— of this Municipality, third entry.
(*Date and surname.*)

Ordinal number.
3.

Rural.—Plantation, the description of which appears in the first record, identical with the description made in the instrument now presented, differing only in regard to the boundaries, in the following manner: "On the North by ———, on the East by ———, on the South by ———, and on the West by ———." There is no evidence of its being burdened with any incumbrances. Mrs. A., —— years of age, married, residing in ———, acquired said farm from her father, Mr. I., as stated in the first record of this number. Said Mrs. A. was married for the first time to Mr. B., who died (*such a day*), and two children of that union are living, Mr. D., —— years of age, and Miss E., —— years of age; Mr. B. willed to Miss A. one-fifth of his property, by a testament executed in ——— on the —— day of ———, 18—, before a notary; the following property was awarded to her in payment thereof: The house, recorded on folio ——, number ——, of volume —— of the Municipality of ———, record number five, to the value of —— pesos; jewelry to the value of —— pesos; and —— pesos in coin; which four items make the sum of —— (*so much*), as appears by distribution, approved by the Judge of ———, on the —— day of ———, through ———, the certified copy of which award was issued by the notary ———, Mr. R., on the —— day of ———, in ——— (*such a town*). And, as Mrs. A. has on the ——— (*such a date*) contracted a second marriage with Mr. G., the above-mentioned property resulting from the said one-fifth has been set apart for the children of the first husband. Mr. E., as guardian of said children, demanded that said property be secured by a proper mortgage. In due course of the proceedings, the Court of ——— issued an order approving the mortgage offered by Mrs. A., consisting of the only real property she was possessed of, and said mortgage being insufficient, she is obliged to amplify it with the first real property she may acquire, said Court ordering the execution of the proper instrument. According to said instrument, Mrs. A. mortgages the estate of this number for ———, the amount of its appraisal, which is made, waiving any new appraisal or action with this object in view, and upon the condition that upon the acquisition of more real property, she shall mortgage enough of it, so as to complete the sum of ———, the value of the property to be set apart. The children, Mr. D. and Miss E., record their mortgage right, upon this estate and upon another estate, recorded as indicated in the marginal note, and upon the above-mentioned condition. All of which appears, etc. (*It ends as all the other entries.*)

XX.

Record of a Legal Mortgage in Favor of the State.

ESTATE NUMBER ——.

MARGINAL NOTES.

Ordinal number.
2.

Town.—House, the description of which, etc. ———. There is no evidence that this house is charged with any incumbrances. Mr. A., —— years of age, acquired said house by inheritance from his father, Mr. P., as per the first record of this number. Mr. D., a resident of ———, having been appointed Superintendent of the Lotteries in the town of ———, and having offered this house as security, amounting to ———, the proper proceedings have been begun, which were approved by ———, of ———, the house of this number having been deemed sufficient to cover the above said liability. By virtue of which Mr. A., as bondsman of Mr. D., mortgages the house of this number as security to the State for the amount of ——— for the liabilities which Mr. D. may incur in the office of said Superintendent of Lotteries, the estate being appraised at ———, waiving any new appraisal or action with this object in view. This bond ——— (*the special conditions upon which said bond was constituted have to be inserted here, and, in case there were no special conditions, this fact must be stated here*). The State records its right to the legal mortgage, as to the result of the above-mentioned office with the aforesaid conditions (*or without any conditions*). The above appears from the instrument constituting the mortgage security, executed by Mr. A. on the —— day, before the notary, Mr. E., the first copy of which was filed on the ———, etc. (*It ends as all the other entries.*)

XXI.

Cautionary notice of a legacy of twenty-five thousand pesos.

ESTATE NUMBER ——.

MARGINAL NOTES.
——

Ordinal number.
——
Letter ——.

Rural.—Plantation, the situation, superficial area, boundaries, and other particulars are to be found in record ——, of this number on folio ——, volume ——, and the incumbrances thereon appear from the record of the same number, on folio ——, volume ——, of this Municipality. Mr. A., resident of ———, and the owner of this estate, as appears from record ——, folio ——, volume ——, died in ———, the —— day of ——— of the present year, leaving a legacy of 25,000 pesos to his nephew, Mr. C., single, 15 years of age, residing in ———, and constituting his two sons, Mr. E. and Mr. F., both of age, his universal heirs. Said legacy having been accepted by the latter, although the partition of the property has not been made up to this date, the legatee, Mr. C., applied to the ——— Court, petitioning that a cautionary notice be ordered to be made in his favor upon the above mentioned plantation; the Court having allowed said claim, Mr. C. gives public notice as to his right as legatee, and by virtue thereof he has constituted this cautionary notice upon the above said plantation for the term of the one hundred and eighty days prescribed by the law. All the above stated appears from the mandate of the ———, issued on ——— (*such a date*), before Mr. G., presented in this the Registry on the —— day of ———, at —— o'clock in the morning, as per entry number ——, folio ——, volume —— of the Day Book, and which order has been filed under number ——— of the proper package. And it being in conformity, etc.

(*Date, full signature, and fees.*)

XXII.

Cautionary notice of an instrument of cancellation, the record of which is suspended.

ESTATE NUMBER ——.

MARGINAL NOTES.
——
The cautionary notice of this entry has lapsed, sixty days having passed since date thereof without remedying the defect of the instrument, the record of which was requested. No fees.
(*Date and surname.*)

Ordinal number.
——
Letter ——.

Record number ——, folio——, of volume ——, by which Mr. D. constituted a mortgage for ——— in favor of Mr. B., is shown to be canceled by an instrument executed by the above said interested parties on the —— day of ———, of ———, before the notary, Mr. C., the first copy of which has been presented on the —— day ———, of ———, according to entry number——, volume —— of the Day Book. But as there appeared therein ——— (*here all the defects capable of correction therein contained shall be stated*), I return it for the correction of these defects within sixty days, and meanwhile I suspend the record of cancellation, in its place entering this cautionary notice. And it being in conformity with the said instrument, I sign this entry in Aguadilla, this —— day of ———, 18—.

(*Full signature and fees.*)

XXIII.

Cautionary notice of a voluntary Mortgage.

ESTATE NUMBER ——.

MARGINAL NOTES.
——

Ordinal number.
——
Letter A.

Rural.—Coffee plantation, the description of which appears in the preceding entry. There is no evidence that it is charged with any incumbrances. Mr. A., —— years of age, acquired said estate by purchase from Mr. B., as appears from the above entry, and he mortgages it to Mr. C., —— years of age, as security for a loan of —— pesos upon the following conditions ——— (*verbatim*). The above appears from the instrument of loan secured by mortgage executed by Mr. A. and Mr. C. on —— day of ———, before the notary, Mr. E., the first copy of which has been presented in this Registry on ———, at —— o'clock in the morning, according to entry number —— of the —— volume of the Day Book. And all the above being in conformity with the instrument to which I refer, but having found in said instrument a defect capable of correction ——— (*here the particulars of the defects shall be stated*), I do suspend the record and return the instrument, in order that the interested parties may correct the above-mentioned defect within sixty days' time, meanwhile entering this cautionary notice. And it being in conformity, etc.

(*Date, signature, and fees.*)

XXIV.

Conversion of the preceding cautionary notice into a record.

3. The preceding cautionary notice, letter A, showing that Mr. C. acquires a mortgage right of ——— upon the estate of this number, is hereby converted into a definite record, as the defect which caused the suspension of the record has been corrected by means of a new instrument executed by the same interested parties before the proper notary on the —— day of ———, in which ——— (*here shall be stated the manner in which the defect was corrected*). The first copy of said instrument, together with the copy of the former instrument, of which the cautionary notice was made, has been presented in this Registry on the —— day of ——— of this year, at —— o'clock in the ———, according to entry number ——, folio ——, volume —— of the Day Book. And it being in conformity, etc.

(*Full signature and fees.*)

XXV.

Cautionary notice of a property right in consequence of the failure to record the realty which is affected thereby.

ESTATE NUMBER ——.

MARGINAL NOTES. —— Ordinal number. —— Letter ——. Town.—House number —— of ——— Street, in this town. It is bounded on the right by house number ——; in the rear by house number ——, on ——— Street; and on the left by ———, Street. Its superficial area is —— square meters. Mr. E., a resident of ———, is the owner of an annuity (censo) of —— pesos, principal and of a feudal fee of —— pesos imposed upon said house, according to the public instrument executed on the —— day of ——— before the notary, Mr. M., the first copy of which he has presented in this Registry, in order that a cautionary notice might be made, because it was ascertained that neither said annuity (censo) nor the estate itself is recorded in favor of its present owner, Mr. E., nor in favor of any other person. In consequence of its not being recorded in favor of anyone, I make a cautionary notice because of the above-stated defect, which should be corrected in sixty days. All the above appears in the aforesaid first copy presented in this Registry at —— o'clock in the ——— of —— day of ———, according to entry number ——, folio ——, volume —— of the Day Book. And being in conformity with the instrument to which I refer, I sign this in Cadiz, this —— day of ———, 18—.

(*Signature in full and fees.*)

XXVI.

Cancellation of a cautionary notice of an agricultural loan, made in consequence of a written request of the interested parties.

ESTATE NUMBER ——.

MARGINAL NOTES. —— Ordinal number. —— Letter ——. Cautionary notice of the Agricultural loan, letter ——, mentioned in folio ——, volume —— of this Municipality, is hereby canceled in consequence of the signed petition made on —— day of ——— by Mrs. A., in whose favor it was constituted, and by Mr. B., who has constituted it, in consequence whereof the estate to which it refers is freed from said charge. Both the interested parties have been identified before me; and I do hereby certify to knowing them, and that there is no evidence upon the record that either of them has lost his or her respective rights stated in the notice which is canceled. Said petition was presented on the —— day of ———, at —— o'clock in the morning, as appears from entry number ——, folio ——, volume —— of the Day Book, and is filed under number —— in the proper package. And being in conformity, etc.

(*Date, full signature, and fees.*)

XXVII.

Cancellation of a record of a voluntary Mortgage upon several estates situated in the same municipal district.

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The same as Form number 5.	3.	The preceding record of a mortgage right is hereby wholly canceled, as the debtor, Mr. J. R. O., has paid to the creditor, Mr. J. V. D., the sum of —— pesos, together with the interest past due, the receipt of which has been certified to by the notary, and the said creditor having consented to this cancellation. This appears in the instrument executed on the —— day of ———, before the notary, Mr. L. L., the first copy of which instrument has been presented in this Registry, at —— o'clock in the morning on the —— day of the present month, according to presentation entry number ——, folio ——, volume —— of the Day Book, the ordinary copy of which instrument having been filed under number —— in the proper package. And being in conformity, etc. (*Date, full signature, and fees.*)

REMARKS.

The cancellation made according to the preceding form shall be made only in the Registry corresponding to the estate in which there appears the full record of mortgages. In regard to all other estates, there shall be only stated in the margin of the proper mortgage records a memorandum in the following terms: "The adjoining record number —— is canceled in consequence of the payment by the debtor, Mr. J. R. O., to the creditor, Mr. J. V. D., of the principal loaned, together with the interest, according to the instrument executed on the —— day of ———, before the notary, Mr. L. L., as appears from record number 3, estate number ——, folio ——, volume —— of the Municipality of ———."

(*Date and surname.*)

XXVIII.

Certificate in connection with entries of any kind pertaining to a given property.

I, N. N., Register of ———, do hereby certify that, upon the application of Mr. A, demanding the issue of a certificate of all the entries of any kind existing in this Registry for thirty years last past, pertaining to the house situated on ——— street, number ——, block number ——, and having searched the proper books, it appears:

First. That the said house is the one designated under the same number ——— (*or, under such a number*), bounded in the year one thousand eight hundred and fifty-nine on the right ——— (*here the boundaries*), and was sold by its owner, Mr. B., to Mr. C., for —— pesos, which was paid in cash, with an obligation to recognize and reserve in his favor an annuity (censo) of (*so much of the principal and so much of annual payments*), according to the public instrument executed on ——— (*such a date*), which was recorded in this Registry on the sixth of March, of said year, one thousand eight hundred and fifty-nine, according to what appears in volume ——, folio ——, of the old "Receptoría."

Second. That said Mr. C. willed the above said house to Mr. E. in his testament, executed in ——— on the sixth of January, one thousand eight hundred and sixty, which was recorded in the fourth volume, folio ——, of the old "Receptoría."

Third. That Mr. E. mortgaged said house to Mr. G. as security for a loan of —— pesos for ten years at five per cent interest, according to the public instrument executed in the said city of ——— on the ninth day of November, one thousand eight hundred and sixty-four, which was recorded in the ——— book, folio ——, etc. (*on such a date*), which record has not been canceled up to date. (*In this manner all the other records that may appear shall be stated ending thus:*) And there being no other entry in force either in the Registry or in the Day Book, I sign these presents in ———.

(*Date and signature.*)

Fees for the search in the old "Receptoría," ———.

Do. For this certificate, ———.

XXIX.

Verbatim certification of entries of all kinds by virtue of a judicial mandate.

I, N. N., etc., ——— certify that, in compliance with the preceding mandate, I have examined all the entries pertaining to the books of the old and the new Registry, and it appears:

First. Folio —— of the ——— book of the old Registry contains the following entry: (*It is copied.*)

Second. Folio —— of the ——— book, of the Day Book, entry number, ——.

Third. On the margin of the preceding entry there is the following note: ———.

Fourth. Folio —— of the ——— book of the Register of Property of the town of ———, estate number ——, first record ———.

The four entries hereinbefore inserted are the verbatim copies of those found on the folios and books, and under the numbers above mentioned, to which I refer. And, there being no other pertaining to said estate, that this may appear, I sign these presents in ———.

(*Date and signature.*)

Certification fees ———.

Do. For the search in the old Registry ———.

XXX.

Certification of Mortgage Records recorded against a given person.

I, N. N., etc., ———, certify that upon the application of Mr. A., asking that a certification be issued pertaining to all the mortgages created by Mr. C. during the ten years last past upon the estates which he possesses in ———, and upon examination of the books of the Registry and of the Day Book, it appears:

First. That, being the owner of the sugar plantation called "———," situated in the district of ———, subdistrict of ———, measuring (*such a superficial area*), designated in the Registry of Property with number ——, folio ——, volume ——, according to entry number ——, the boundaries of which are ———, has mortgaged it, together with other property, for the sum of ———, it being appraised at ———, for the security of the dowry, appraised at —— pesos, which his wife, E., brought in marriage, according to the public instrument executed in ——— on the sixth day of ——— of the year ———, which said mortgage appears made on ——— (*such a day*), record number ——, folio ——, volume ——.

Second. That said Mr. C., being also the owner of a coffee plantation situated in the district of ———, measuring (*so many*) "cuerdas," designated in the Registry of Property with number ——, on folio ——, volume ——, according to record number ——, and the boundaries of which are ———, has mortgaged it for —— pesos, it being appraised at —— pesos, together with other property belonging to Mr. G., as security for the loan of —— pesos, made to the said G. by I —— for three years at six per cent interest, according to the public instrument executed in this city on the ——— (*such a day*), which mortgage appears made on (*such a day*), record number ——, folio ——, volume ——.

Third. That, finally, amongst the entries of the Day Book, which were not as yet recorded, there appears on folio —— of the volume —— an entry which (verbatim) reads as follows: "Number —— (*here the entry of presentation*)."

And, the above said entries not having been canceled, there being no other mortgages pending against said C. in the proper Registry or in the Day Book, I issue this certificate in ———.

(*Date and signature.*)

Fees for the search in the old "Receptoría," ———.

Do. For this certificate, ———.

XXXI.

Certificate that there are no property rights of a given kind charged on an estate.

I, N. N., etc., ———, certify that, upon the application of Mr. A. for a verbatim certification of the annuities (*censos*) and mortgages charged upon the house which he owns in this city, ——— street, number ——, or, in case there should be no charges of such a character upon it, if this should appear from the time of the beginning of the now abolished "Receptoría," I have examined all the books of the same, and there does not appear therefrom that house number —— of ——— street, designated under number —— in the Registry of Property, volume ——, folio ——, the boundaries of which are ———, and the ownership of which is recorded in favor of the above said A., by record number ——, is charged neither with annuities (*censos*), nor with mortgages in force from the beginning of the old Registry, neither has there been presented in regard to this house any instrument pertaining to such charges pending its record. Thus it appears from the books of the Registry and from the Day Book, and that it may so appear I issue these presents in ———.

(*Date and signature.*)

Fees for the search in the old "Receptoría," ———.

Do. For this certificate, ———.

Registry of Property of ——.

XXXII.

Index of Persons.

Name of the person in whose favor or against whom the ownership or a property right of an estate is recorded or entered.	Volume and folio of the records or entries in which said person has an interest.	Volume and folio where cancellations appear.
Abad (Mr. José)	Volume II, folio 64	Volume II, folio 68.
Belabal (Mr. Juan)	Volume IV, folio 57; Volume VI, folio 19	Volume IV, folio 57; Volume VI, folio 61.
Becerril (Mr. Pedro)	Volume V, folio 14; Volume VII, folio 95; Volume X, folio 20	Volume V, folio 14; Volume VII, folio 64.

Registry of Property of ——. Municipal district of ——.

XXXIII.

Index of Estates.

SECTION OF TOWN ESTATES.

Square or street.	Number.	Name of the subdistrict or town.	Number of the estate in the Registry.	Book and folio in which it appears recorded.	The kind or class of ownership, or property right, or of the cautionary notice.
Armas	2	Arroyo Naranjo	34	Volume I, folio 27	Ownership.
Cruz	14	Calvario	52	Volume IV, folio 54	Mortgage.
Comercio	10 new and 17 old.	Puentes Grandes	13	Volume II, folio 89	Notice of a legacy, attachment, etc.

Registry of Property of ——. Municipal district of ——.

XXXIV.

Index of Estates.

SECTION OF RURAL ESTATES.

Name of the estate or of the farm, or district.	Town, subdistrict, quarter, or jurisdiction.	Boundaries.		Area.		Agricultural use for which it is intended.	Number of the estate in the registry.	Book and folio in which the entry appears.	The kind or class of ownership, right, or cautionary notice.
		East.	West.	Hectares.	Ares.				
Carmelita	Mameyes	The sea	Road of Rio Piedras	20	0.6	Sugar plantation	2	Volume IV, folio 35	Ownership.
Pitajaya	do	Mr. Antonio Veve	Arroyo Grande	25	0.6	Coffee plantation	15	Volume X, folio 30	Servitude.
Concepción	Medio Mundo	Mr. Juan Zalduondo	do	40	0.1	Sugar plantation	40	Volume VIII, folio 95.	Attachment.

XXXV.

AUDIENCIA OF.....

YEAR 18....

REGISTRY OF PROPERTY OF.....

TABLE NUMBER I.—ALIENATION OF REAL PROPERTY.

SECTION 1.—*Number, value, and form of alienations.*

1 Total number of alienated estates.		2 Alienated by last will.						3 Alienated by instruments or contracts for a valuable consideration.						4 Alienated by instruments or contracts without valuable consideration.				5 AMOUNTS DUE TO THE STATE FOR REAL-ESTATE TAXES AND FEES FOR TRANSFER OF REAL ESTATE.		6 FEES EARNED BY THE REGISTER.	
		NUMBER OF ESTATES.		VALUE OR APPRAISEMENT.				NUMBER OF ESTATES.		AMOUNT of the price paid in cash.		AMOUNT of the price to be paid at stated periods.		NUMBER OF ESTATES.		VALUE or appraisement.					
Rural.	Town.	Rural.	Town.	Rural. Pesos.	Rural. Centavos.	Town. Pesos.	Town. Centavos.	Rural.	Town.	Pesos.	Centavos.	Pesos.	Centavos.	Rural.	Town.	Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.

SECTION 2.—*Classification of alienated estates according to their value or price.*

7 300 PESOS OR LESS.		8 FROM 301 TO 1,500 PESOS.		9 FROM 1,501 TO 3,000 PESOS.		10 FROM 3,001 TO 7,500 PESOS.		11 FROM 7,501 TO 15,000 PESOS.		12 FROM 15,001 TO 30,000 PESOS.		13 FROM 30,001 TO 60,000 PESOS.		14 FROM 60,001 TO 150,000 PESOS.		15 MORE THAN 150,000 PESOS.		16 ESTATES, THE PRICE OR VALUE OF WHICH IS NOT SHOWN SEPARATELY.		17 ESTATES, THE PRICE OR VALUE OF WHICH IS NOT STATED IN ANY MANNER.		18 TOTAL OF ESTATES.	
Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.	Rural.	Town.

SECTION 3.—*Classification of rural estates according to their superficial area.*

19 LESS THAN 20 ARES.		20 FROM 21 TO 50 ARES.		21 FROM 51 TO 99 ARES.		22 FROM 1 TO 2 HECTARES.		23 FROM 2 TO 5 HECTARES.		24 FROM 5 TO 10 HECTARES.		25 FROM 10 TO 20 HECTARES.		26 FROM 20 TO 50 HECTARES.		27 FROM 50 TO 100 HECTARES.		28 MORE THAN 100 HECTARES.		29 UNKNOWN SUPERFICIAL AREA.		30 TOTAL.	
By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.

SECTION 4.—*Classification of town estates according to their superficial area.*

31 LESS THAN 100 SQUARE METERS OF SUPERFICIAL AREA.		32 FROM 100 TO 200 METERS.		33 FROM 200 TO 500 METERS.		34 FROM 500 TO 1,000 METERS.		35 FROM 1,000 TO 5,000 METERS.		36 FROM 5,000 TO 10,000 METERS.		37 FROM 10,000 TO 25,000 METERS.		38 MORE THAN 25,000 METERS.		39 UNKNOWN SUPERFICIAL AREA.		40 TOTAL.	
By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.	By will.	By contract.

..... day of ..... 18....,

.....,

Register.

Remarks relating to Table No. 1.

1. Column number 1 shall state the total number of estates that have been alienated, in any manner whatsoever.
2. Column number 2 contains the alienations made by reason of testamentary heirship, intestate inheritance, legacy, and gift *causa mortis.*
3. All the estates alienated other than by virtue of a last will shall be considered as having been alienated by contract.
4. Column number 3 contains the facts relating to the record of contracts of sale, even with the right of repurchase, exchanges, awards in payments of debts, assignments, etc.
5. Column number 4 contains alienations by dowry, gifts *inter vivos*, partnerships, concessions for public works, railroads, etc.
6. The total of the estates contained in columns 7 to 17 that has to be stated in column number 18 shall be the same as column number 1.
7. When the value of several rural and town estates appears to be included in one amount, said estates shall, notwithstanding, be inserted in columns 2. 3, or 4, as well as the value which the interested parties declare to be corresponding to each of them. In case the approximate value is not obtained, and if by the search of the Registry the desired information is also unobtainable, the amount or price shall be divided into two equal parts, assigning one-half to the rural estates and the other half to the town estates.
8. The estates to which the preceding remark refers shall be also included in column number 16.
9. Sections 3 and 4 of this table classify the alienated estates according to their respective areas; therefore the figures of columns 30 and 40 are always equal to those of columns 1 and 18. In each of the columns of these two sections a discrimination shall be made between the estates, according to whether they have been alienated by will or by contract, the totals being bound to agree with the facts stated in section 1 of the table, columns 2, 3, and 4.

XXXVI.

AUDIENCIA OF.....

YEAR 18....

REGISTRY OF PROPERTY OF.....

TABLE NUMBER II.—PROPERTY RIGHTS ON REALTY.

SECTION 1.—*Number of property rights constituted.*

1 USE.	2 USE AND HABITATION.	3 SERVITUDE.	4 ANNUITIES (CENSOS). Emphyteutic.	To be set apart.	Ordinary.	Life.	5 RENT.	6 CHARGES OR TEMPORARY PENSIONS.	7 TOTAL OF PROPERTY RIGHTS CONSTITUTED.	8 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE CONSTITUTION OF PROPERTY RIGHTS. Pesos.	Centavos.	REGISTER'S FEES. Pesos.	Centavos.

SECTION 2.—*Specification of the above-mentioned property rights.*

10 USE.			11 USE AND HABITATION.			12 SERVITUDE.			13 ANNUITIES (CENSOS.)													14 RENT.			15 CHARGES OR TEMPORARY PENSIONS.			16 TOTAL.			17
									EMPHYTEUTIC.			TO BE SET APART.			TRANSFERABLE.			LIFE.												
Of rural estates.....	Of town estates.....	Of estates of both kinds....	Of rural estates.....	Of town estates.....	Of estates of both kinds....	Rural.....	Town.....	For public utility.....	Upon rural estates...	Upon town estates...	Upon estates of both kinds.....	Upon rural estates...	Upon town estates...	Upon estates of both kinds.....	Upon rural estates...	Upon town estates...	Upon estates of both kinds.....	Upon rural estates...	Upon town estates...	Upon estates of both kinds.....	Of rural estates.....	Of town estates.....	Of estates of both kinds...	Upon rural estates.....	Upon town estates.....	Upon estates of both kinds..	Of the property rights constituted upon rural estates.....	Of the property rights constituted upon town estates.....	Of the property rights constituted upon estates of both kinds.....	TOTAL OF REAL RIGHTS CONSTITUTED.

SECTION 3.—*Classification of said property rights.*

18 PROPERTY RIGHTS CONSTITUTED— By will.	By contract.	19 PROPERTY RIGHTS CONCERNING WHICH— The price does not appear.	The price has been stated.	AMOUNTS DECLARED. Pesos.	Centavos.	20 PROPERTY RIGHTS WHICH— Do not earn a rent or pension.	Earn a rent or pension.	AMOUNT OF ANNUAL RENTS OR PENSIONS. Pesos.	Centavos.

SECTION 4.—*Changes in property rights.*

21 BY ACKNOWLEDGMENTS. Number of acknowledgments.	Amount of same. Pesos.	Centavos.	22 BY REDEMPTIONS. Number of redemptions.	Amounts of sums redeemed. Pesos.	Centavos.	23 BY REDUCTIONS. Number of reductions.	Amount of the reductions made in the principals. Pesos.	Centavos.	24 BY SUBROGATIONS. Number of subrogations.	Amount of the principals. Pesos.	Centavos.	25 BY TRANSFERS OR CESSIONS. Number thereof.	Amount of the principals. Pesos.	Centavos.	26 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR CHANGES IN PROPERTY RIGHTS. Pesos.	Centavos.	27 FEES OF THE REGISTER FOR CHANGES IN PROPERTY RIGHTS. Pesos.	Centavos.

..... day of ....., 18....

.....,

Register.

Remarks to Table No. II.

1. The first three sections of this table refer to property rights constituted during the year, and therefore columns 7, 16, 17, 18, 19, and 20 must contain the same figure, since their headings only require the number of said rights, either totalized or separate, under different categories.
2. In the first part of column 18 are included all the property rights originated from a contract or an agreement, even if they have been created by a judicial decree; in the second part there are included those proceeding from wills, even when the declaration appears as having taken place afterwards.
3. When the pensions (column 20) should consist of products, their value shall be calculated by the Register in coin at the current rates, and the same shall be done when consisting of food, estimating its value upon a conservative basis.
4. The fourth and last section of this table includes the changes occurred during the year in the property rights, whether said changes occurred in the property rights constituted during the same year or in the property rights constituted at some previous time. Said section is therefore independent of the preceding ones, and it is provided with a special column wherein shall appear the amount collected by the Public Treasury and with another column for the Register's fees.

AUDIENCIA OF.....

XXXVII.

YEAR 18....

TABLE NUMBER III.—MORTGAGES.

REGISTRY OF PROPERTY OF.....

SECTION 1.—*Number of mortgages constituted and amounts thereof.*

1 NUMBER OF MORTGAGES CONSTITUTED.			2 NUMBER OF ESTATES MORTGAGED.			3 AMOUNTS SECURED.						4 MORTGAGES CONSTITUTED.							5 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE CONSTITUTION OF MORTGAGES.		6 FEES EARNED BY THE REGISTER FOR THE CONSTITUTION OF MORTGAGES.	
Legal.	Voluntary.	Total.	Rural.	Town.	Total.	By legal mortgages.		By voluntary mortgages.		Total.		Without any stipulated limit of time.	For one year or less.	For more than one year, up to and including three years.	For more than three years, up to and including six years.	For more than six years, up to and including ten years.	For more than ten years, up to and including twenty-five years.	For more than twenty-five years.				
						Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.								Pesos.	Centavos.	Pesos.	Centavos.

SECTION 2.—*Classification of mortgages constituted for the amount secured.*

7 FOR 300 PESOS OR LESS.		8 FROM 301 TO 1,500 PESOS.		9 FROM 1,501 TO 3,000 PESOS.		10 FROM 3,001 TO 7,500 PESOS.		11 FROM 7,501 TO 15,000 PESOS.		12 FROM 15,001 TO 30,000 PESOS.		13 FROM 30,001 TO 60,000 PESOS.		14 FROM 60,001 TO 150,000 PESOS.		15 FOR MORE THAN 150.000 PESOS.		16 TOTAL.		
Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal mortgages.	Voluntary mortgages.	Both kinds.

SECTION 3.—*Number of cancellations made and their amounts.*

17 NUMBER OF MORTGAGES CANCELED.			18 NUMBER OF ESTATES RELEASED.			19 AMOUNTS RETURNED.						20 MORTGAGES CANCELED.							21 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE CANCELLATION OF MORTGAGES.		22 FEES EARNED BY THE REGISTER FOR THE CANCELLATION OF MORTGAGES.	
Legal.	Voluntary.	Total.	Rural.	Town.	Total.	For legal mortgages.		For voluntarily constituted mortgages.		Total.		Constituted without any stipulated limit of time.	Constituted for one year or less.	Constituted for more than one year, up to and including three years.	For more than three years, up to and including six years.	For more than six years, up to and including ten years.	For more than ten years, up to and including twenty-five years.	For more than twenty-five years.				
						Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.								Pesos.	Centavos.	Pesos.	Centavos.

SECTION 4.—*Classification of mortgages canceled for the amount they secured.*

23 FOR 300 PESOS OR LESS.		24 FROM 301 TO 1,500 PESOS.		25 FROM 1,501 TO 3,000 PESOS.		26 FROM 3,001 TO 7,500 PESOS.		27 FROM 7,501 TO 15,000 PESOS.		28 FROM 15,001 TO 30,000 PESOS.		29 FROM 30,001 TO 60,000 PESOS.		30 FROM 60,001 TO 150,000 PESOS.		31 FOR MORE THAN 150,000 PESOS.		32 TOTAL.		
Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Legal.	Voluntary.	Cancellations of legal mortgages.	Cancellations of mortgages voluntarily constituted.	Cancellations of both classes of mortgages.

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Register.

Remarks to Table No. III.

1. In stating the number of mortgages in columns 1 and 4 only the number of mortgage rights constituted, and not the number of estates mortgaged, shall be considered.
2. Mortgages constituted in favor of the State, as a security for the purchase price of the estates sold by the same, shall be stated in the proper place as mortgages voluntarily constituted.
3. In the same manner as the mortgages voluntarily constituted, legal mortgages shall be classified in column No. 4, according to the limit of time for which they were constituted, and in cases when the time was not fixed they shall be included amongst those which have been constituted without any specified limit of time.
4. When a mortgage for an unsettled sum is constituted, or as a security for an obligation not measured by cash or by estimated products, the total value of the mortgaged estate or estates shall be considered as the amount of the incumbrance.
5. On stating the number of cancellations in columns 17 and 20, there shall be stated only the number of incumbrances canceled, and not the number of the estates affected by said incumbrances.
6. Amongst the mortgages canceled there shall be included all the mortgages canceled during the period to which the table refers, even when previously constituted.

XXXVIII.

AUDIENCIA OF .....

Year, 18....

REGISTRY OF PROPERTY OF .....

TABLE NUMBER IV.—LOANS.

SECTION 1.—*Loans constituted with mortgages upon rural estates.*

1 WITHOUT INTEREST.			2 WITH 1 TO 6 PER CENT INTEREST.			3 FROM 6 TO 12 PER CENT.			4 FROM 12 TO 18 PER CENT.			5 FROM 18 TO 24 PER CENT.			6 OVER 24 PER CENT.			7 TOTAL.			8 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE TAX ON REAL PROPERTY AND ON TRANSFER OF PROPERTY.		9 REGISTER'S FEES.	
Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.

SECTION 2.—*Loans constituted with mortgages upon town estates.*

10 WITHOUT INTEREST.			11 WITH 1 TO 6 PER CENT INTEREST.			12 FROM 6 TO 12 PER CENT.			13 FROM 12 TO 18 PER CENT.			14 FROM 18 TO 24 PER CENT.			15 OVER 24 PER CENT.			16 TOTAL.			17 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE TAX ON REAL PROPERTY AND ON TRANSFER OF PROPERTY.		18 REGISTER'S FEES.	
Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Number of loans.	Amounts loaned. Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.

SECTION 3.—*Loans constituted under the form of transferable annuities (censos).*

19 NUMBER OF—			20 NUMBER OF—		21 AMOUNTS DELIVERED.				22 AMOUNT OF THE TRANSFERABLE ANNUITIES (CENSOS).				23 REDUCTIONS IN THE TRANSFERABLE ANNUITIES (CENSOS).		24 REDEMPTIONS OF TRANSFERABLE ANNUITIES CENSOS.						25 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE TAX ON REAL PROPERTY AND ON TRANSFER OF PROPERTY.		26 REGISTER'S FEES.	
																Amount of the principals redeemed.								
Annuities (censos) upon rural estates.	Annuities (censos) upon town estates.	Annuities (censos) upon estates of both kinds.	Redeemable annuities (censos).	Irredeemable annuities (censos).	Rural. Pesos.	Centavos.	Town. Pesos.	Centavos.	Rural. Pesos.	Centavos.	Town. Pesos.	Centavos.	Number of annuities (censos) reduced.	Amount of the reduction in the principal. Pesos.	Centavos.	Number of (censos) annuities redeemed.	Rural. Pesos.	Centavos.	Town. Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.

SECTION 4.—*Loans constituted under the form of contracts with the right of repurchase or of privileged contracts.*

27 NUMBER OF—			28 NUMBER OF—					29 VALUE OR APPRAISEMENT OF THE ESTATES, IF KNOWN.		30 PRICE OR AMOUNT PAID BY THE PURCHASER.				31 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE TAX ON REAL PROPERTY AND ON TRANSFER OF PROPERTY.		32 REGISTER FEES.	
										Rural.		Town.					
Contracts with right of repurchase upon rural estates.	Contracts with right of repurchase upon town estates.	Contracts with right of repurchase upon estates of both kinds.	Contracts with right of repurchase executed without any fixed time limit.	Contracts with right of repurchase for a period not exceeding two years.	Contracts with right of repurchase for over two years and up to and including five years.	Contracts with right of repurchase for over five years and up to and including ten years.	Contracts with right of repurchase executed for a longer period than ten years.	Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos

SECTION 5.—*Reconveyances.*

33 NUMBER OF—			34 NUMBER OF—					35 VALUE OR APPRAISEMENT OF THE RECONVEYED ESTATES, IF KNOWN.		36 PRICE OR AMOUNT RETURNED BY THE RECONVEYORS.				37 AMOUNT COLLECTED BY THE PUBLIC TREASURY FOR THE TAX ON REAL PROPERTY AND ON TRANSFER OF PROPERTY.		38 REGISTER'S FEES.	
										Rural.		Town.					
Reconveyances of rural estates.	Reconveyances of town estates.	Reconveyances of estates of both kinds.	Reconveyances of estates without any specified time fixed for redemption.	Reconveyances within a period not exceeding two years.	Reconveyances between two and five years.	Reconveyances between five and ten years.	Reconveyances made ten years after the execution of the contract.	Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.	Pesos.	Centavos.

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Register.

Remarks relating to Table No. IV.

1. Sections 1 and 2 of this table include the ordinary constitutions of loans, either upon rural or town estates.
2. The total of the amounts included in columns 7 and 16 can never exceed the amount stated in column number 3 of Table III, as this table refers to all the mortgages voluntarily constituted, and Table IV refers only to mortgages constituted as security for loans.
3. Section 3 includes loans executed under the special form of ordinary annuity (censo); and the number of these annuity rights—but not the number of estates—shall be stated in columns 19 and 20.
4. The figures stated in columns 23 and 24 shall not exceed the totals appearing in columns 22 and 23 of Table No. II, or table of property rights, because these include redemptions and reductions of annuities (censos) of all kinds, while Table IV includes only the redemptions and reductions of transferable annuities (censos) on account of their special character of secured loans.
5. When the principal or the interest should consist of specie, its equivalent in coin shall be calculated by the Register at the current rate of exchange.
6. Section 4 includes sales with the right of repurchase, and Section 5 includes reconveyances in favor of the original owners. Both are provided, the same as the preceding sections, with proper columns for separately stating the fees earned and the amount collected by the Public Treasury.
7. Transfers of reconveyance rights shall be included in Table II. The Register shall state, through a note in Table IV, the number of contracts in which the vendor alienates absolutely the estates that he previously sold with the right of repurchase, stating the superficial area of the real property and the purchase price paid by the purchaser in the last alienation.

XXXIX.

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TABLE NUMBER V.—ESTATES RECORDED FOR THE FIRST TIME.

SECTION 1.—*Ownership—Rural estates, the ownership of which was recorded for the first time during the year to which this table refers.*

1 LESS THAN 20 ARES.			2 FROM 20 TO 50 ARES.			3 FROM 51 TO 99 ARES.			4 FROM 1 TO 2 HECTARES.			5 FROM 3 TO 5 HECTARES.			6 FROM 6 TO 10 HECTARES.			7 FROM 11 TO 20 HECTARES.			8 FROM 21 TO 50 HECTARES.			9 FROM 51 TO 100 HECTARES.			10 OVER 100 HECTARES.			11 UNKNOWN SUPERFICIAL AREA.			12 TOTAL.		
Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.

SECTION 2.—*Possession—Rural estates, the possession of which was for the first time recorded during the year to which this table refers.*

	13 LESS THAN 20 ARES.			14 FROM 20 TO 50 ARES.			15 FROM 51 TO 99 ARES.			16 FROM 1 TO 2 HECTARES.			17 FROM 3 TO 5 HECTARES.			18 FROM 6 TO 10 HECTARES.			19 FROM 11 TO 20 HECTARES.			20 FROM 21 TO 50 HECTARES.			21 FROM 50 TO 100 HECTARES.			22 OVER 100 HECTARES.			23 UNKNOWN SUPERFICIAL AREA.			24 TOTAL.		
	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.
Possession previous to the date on which the mortgage law went into force.....																																			
Possession after that date																																			
Total																																			

SECTION 3.—*Ownership—Town estates, the ownership of which was for the first time recorded during the year to which this table refers.*

25 LESS THAN 100 SQUARE METERS OF SUPERFICIAL AREA.			26 FROM 101 TO 200 METERS.			27 FROM 201 TO 500 METERS.			28 FROM 501 TO 1,000 METERS.			29 FROM 1,001 TO 5,000 METERS.			30 FROM 5,001 TO 10,000 METERS.			31 FROM 10,001 TO 25,000 METERS.			32 OVER 25,000 METERS.			33 UNKNOWN SUPERFICIAL AREA.			34 TOTAL.		
Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.

SECTION 4.—*Possession—Town estates, the possession of which was recorded for the first time during the year to which this table refers.*

	35 LESS THAN 100 SQUARE METERS OF SUPERFICIAL AREA.			36 FROM 101 TO 200 METERS.			37 FROM 201 TO 500 METERS.			38 FROM 501 TO 1,000 METERS.			39 FROM 1,001 TO 5,000 METERS.			40 FROM 5,001 TO 10,000 METERS.			41 FROM 10,001 TO 25,000 METERS.			42 OVER 25,000 METERS.			43 UNKNOWN SUPERFICIAL AREA.			44 TOTAL.		
	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.	Number of estates.	Their value. Pesos.	Cen.
Possession previous to the date on which the mortgage law went into force.....																														
Possession after that date																														
Total																														

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Register.

Remarks relating to Table No. V.

1. Sections 1 and 3 refer to records of ownership; sections 2 and 4 to records of possession.
2. Only those estates shall be included in this table for which during this year a folio and a number in the registry have been opened for the first time.
3. When the superficial area shall appear stated in the record in the old measures of the country the register shall convert them into their equivalents according to the metric system.
4. When the appraisement of several rural and town estates is included in one amount, without any possibility of distinguishing them, they shall not be included in this table, but if it is desired that their separate values should appear they shall be included in one of the tables for the following years.
5. In order that it should appear for all time whether an estate has been included in this table or not, the register shall, when he has included it, write the letter "E" on the margin of the first record.

XL.

AUDIENCIA OF.....

YEAR 18....

REGISTRY OF PROPERTY OF.....

TABLE NUMBER VI.—FEES.

FIRST AND LAST SECTION.—*Fees earned by the Register for work done in this office during the year 18....*

1 FOR NEW DOCUMENTS.			2 FOR OLD DOCUMENTS.			3 FOR INFORMATION GIVEN AS TO OWNERSHIP OR POSSESSION.			4 FOR CERTIFICATES ISSUED BY THE REGISTER.			5 FOR RECORDS OF PROCEEDINGS FOR CLEARING TITLES AND OTHERS.			6 TOTAL OF FEES EARNED.		7 FEES DUE FOR JUDICIAL MANDATES OR FOR RECORDING IN FAVOR OF THE STATE—NOT RECEIVED.		8 NET AMOUNT LEFT TO THE REGISTER AFTER DEDUCTING THE FEES OF THE PRECEDING COLUMN.	
Number of them.	Fees earned.		Number of them.	Fees earned.		Number of them.	Fees earned.		Number of them.	Fees earned.		Number of them.	Fees earned.							
	Pesos.	*Centavos.*		*Pesos.*	*Centavos.*		*Pesos.*	*Centavos.*		*Pesos.*	*Centavos.*		*Pesos.*	*Centavos.*	*Pesos.*	*Centavos.*	*Pesos.*	*Centavos.*	*Pesos.*	*Centavos.*

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Register.

Remarks Relating to Table No. VI.

1. New documents are those executed after the date on which the mortgage law went into force, and old documents those executed prior to said date.
2. There shall be included in the first five columns all the fees earned by the register for any of the services included in the schedule, not only for work done by request of individuals, but also by judicial order or for the public treasury.
3. The total of the fees of the first five columns shall be correctly stated in column No. 6; from that sum there shall be deducted the total of the fees earned for judicial orders or for work executed for the public treasury as fees earned but not received; the balance shall be placed in column No. 8.

XLI.

Judicial proceedings for recording possession in the Registry of Property.

PETITION REQUESTING AN INVESTIGATION.—To the Court (of First Instance, or Municipal Court, as the case may be). Mr. A., ———, a resident of ———, as shown by his personal "cedula" (of *such a* class), which was issued to him under number ———, formally appears and in conformity with the laws, says: I am the owner of a piece of land of ——— ares and ——— centiares of superficial area, situated in this Municipal district, sub-district of ———, of *such a* kind (it must be specified), which is bounded on the North by ———; on the East by ———; on the South by ———; and on the West by ———, and on which there is no encumbrance (or has *such* encumbrances). I had this estate by inheritance from my father who in his turn had inherited it from his father, but, on account of the small value of same, and there being no notaries in the town, (or for some other reason), I have no written title to prove my ownership (or it is difficult for me to find it as I do not know in which archives or book it may be) in spite of the fact that I have already been ——— years in possession of said estate, and, in order to remedy the absence of said title and to enable me to record my right in the Registry of Property, I request that proceedings be begun as authorized by Articles 390 and the following of the Mortgage Law, and therefore: I respectfully petition the Court to receive the declarations of witnesses submitted by me upon the fact of said possession, ordering it to take place with the hearing of the Fiscal (Representative of the Department of Public Prosecution) and summoning the adjoining owners whose names are: ——— ———, and to approve said proceedings in case they shall be found according to law, and ordering that the proceedings be delivered to me for record in the Registry of Property, since my request is according to justice.

Furthermore, in compliance with the provisions of Art. 391 of the Mortgage Law, I accompany herewith the certificate issued by the Mayor of ——— (of the Municipal district where the property is situated, or from the official empowered to collect in said town the territorial taxes), according to the assessment roll (or according to other official data), showing that I pay such an amount for taxes as owner of the estate hereinbefore described, and I also request the Court to admit it and to order it to be attached to the proceedings for its due legal effects. (*Date and signature.*)

(*If it is desired to record a property right, the investigation shall be asked for and made, giving a hearing to the owner or to the other participants in the ownership of the estate charged with that right. When no quarterly tax has been paid, on account of the realty or property right having been recently acquired, or because the petitioner is the heir of the former owner, the absence of the tax certificate shall be remedied in the manner established by rule 4 of Art. 391 of the Mortgage Law.*)

Partition or presentation proceedings, as the case may be.

RULING: In consequence of the foregoing petition with the certificate thereto attached having been presented, the investigation proceedings with witnesses are hereby ordered with citation of the Fiscal, (Representative of the Department of Public Prosecution) and of Mr. ——— and Mr. ——— (or of the owner or the participants in the ownership if a property right is involved), as solicited in the said petition. (*Date and signature.*)

Notices and citations in the ordinary form.

DEPOSITION OF THE WITNESS, N. N.—In ——— on the —— day of ———, before Mr. ———, there appeared the witness, N. N., —— years of age, landowner and resident of *such a* locality (of the town or district where the property is situated), which ownership and residence he proves by his personal "cedula" (of *such a* class and number), which he shows (or by *such* documents), to whom said Judge has administered the oath, which he took in due form, promising to tell the truth of what he knows and may be asked, and being asked for his general description in conformity with the law, he said: To be and to be named as above stated, that he is neither an employé, a friend, an enemy, or a relation of the petitioner, and has no interest whatsoever, either direct or indirect, in this matter, nor in any other similar matter, and that he has never been convicted of perjury.

Being asked: Whether it is true that Mr. A. B. did possess and possesses in his own name the estate *or such property rights* (they shall be described), said: That the contents of the question are true and that he is certain of it, because he has constantly observed that Mr. A. B. has exercised the rights and obligations of a rightful owner in regard to said estate.

Being asked: For how long a time has Mr. A. B. been in possession of the estate mentioned in the preceding question, he said: During *so many* years.

The preceding deposition having been read to him, he affirmed it and ratified it, and he signs it together with the Judge and with me, the Secretary (or Clerk of the Court, *Actuario*), to all of which I certify. *Signatures.*

(The form of the remaining depositions shall be similar.)

RULING. To the Fiscal (Representative of the Department of Public Prosecution) in order that he may state what he may wish and deem proper. *Date and signature.*

Notices and formality of delivering the record of proceedings.

OPINION OF THE FISCAL REPRESENTATIVE (Representative of the Department of Public Prosecution.)—The Fiscal says: That he has examined the record of these proceedings, and that, in view of the fact that the witnesses examined comply with the conditions required by rule 2 of Art. 391 of the Mortgage Law, and that the other legal formalities have been complied with, he has nothing to object against said investigation, and requests the Court to approve it (or he finds *such a* defect and asks that it should be corrected). *Date and signature.*

Formalities for obtaining again the record of proceedings and delivering it to the Judge for a final decree.

FINAL DECREE.—In *such a* locality, on *such a* date: In view of these proceedings petitioned for by Mr. A. B.

Whereas, Mr. A. B. presented in this Court a petition, dated ——— ———, stating that he was the owner of *such an* estate or property right (describe it), that he obtained it by inheritance from his father, Mr. C. B., who in his turn inherited it from his father, that he had possession of it for more than ——— years, but that for *such a* reason (which is alleged) he had not a written title of possession, and, therefore, in order to be enabled to record his right in the Registry of Property, he did petition for the due investigation proceedings authorized by Art. 390 of the Mortgage Law (accompanying *such* documents), and requested that the proceedings of investigation be granted with citation of and a hearing by the Fiscal (Representative of the Department of Public Prosecution,) as well as with citation of the owners of the adjoining estates, and that said proceedings be finally approved in so far as the law permits.

Whereas, during the investigation (*so many*) witnesses, neighbors, owners of ———, have testified that it is true that Mr. A. B. did possess in his own name and as an owner for a period of more than ——— years *such an* estate, these facts being known to them from their own knowledge.

Whereas, the record of proceedings was delivered to the Fiscal (Representative of the Department of Public Prosecution) and he has decided that all legal formalities have been complied with and that it was in order that the investigation proceedings should be approved (or has noticed *such a* defect and requested its correction, which was accordingly done.)

Whereas, according to the provisions of Art. 390 of the Mortgage Law, the owner having no written title of possession, may record his right upon previously proving his possession before the Judge of First Instance of the locality where the property is situated, with a hearing by the Fiscal (Representative of the Department of Public Prosecution) and citation of the owners of the adjoining estates, in case it was desired to record the full ownership of an estate, and with citation of the owner or of the other co-participants in the ownership, if it was desired to record a property right, and that, if the estates are located in a town or district where there is no Court of First Instance, said investigation proceedings may be held before the proper Municipal Judge with a hearing by the Fiscal Representative (Public Prosecutor) whose intervention shall be limited to seeing that the formalities of the law are observed in the proceedings.

Whereas, it has been proved by these proceedings with witnesses that Mr. A. B. does possess in his own name and has possessed for more than ——— years the estate (or property right) ——— which he acquired from ——— by right of ———, and that the witnesses who have testified in these proceedings are all residents and land owners in the town or district of ——— where the estate is situated, fulfilling, therefore, the requisites demanded by Art. 391 of the same Mortgage Law, and,

Whereas, all the other legal requisites have been complied with in the proceedings, and there was no opposition on the part of any person, and that the Fiscal (Representative of the Department of Public Prosecution) has decided that it is in order to approve said proceedings,

In view of the above mentioned articles and also of Articles 392 and 393 of the Mortgage Law and Articles 436 to 441 of the Regulations as to its execution,

The Judge, before me, the Secretary, (or Clerk of the Court, *Actuario*), says: That he had to approve and did approve the investigation submitted, ordering that in virtue of the same there shall be recorded in the Registry of Property of ———

the record petitioned for by Mr. A. B., of possession of the estate ——— *without prejudice to a third person who may have a better right*, for which purpose the original record of proceedings shall be delivered to him in order that he may present it in said Registry. So it was provided for, ordered, and signed by ———, to all of which I certify. Before me, ———, Secretary, (or Clerk of the Court, *Actuario*): *Signature.*

Notice and formality of delivery of the record of proceedings to the interested party.

NOTE.—When there is an opposition made by anybody, who considers that he has a right to the property, the record of which is petitioned for, when it is shown that the claim has been presented to the proper Court and that the cautionary notice has been entered in the Registry, the investigation proceedings for possession shall be suspended, and so stated.

Statement of the articles of the Mortgage Law and of these Regulations which agree more or less directly with each other.

Articles of the Law.	Articles of the Regulations.	Articles of the Law.	Articles of the Regulations.
1	1 to 23	186	200
2	24 to 49	190 to 199	201 to 206
3	50 and 51	201 to 206	207 to 210
5	52	207 to 216	211 to 214
6	53 to 56	217 to 221	215
7	57 and 58	222 to 233	216 to 251 and 277 to 289.
8	59 to 62		
9 to 14	63 to 75		
15	76	234 to 237	252 to 257
18	77 to 80	238 to 243	258 to 270
19	81 to 83	244	271 to 274
20	84 to 86	245 to 248	275 and 276
21	87	254 to 262	290 to 302
30 to 32	88 to 90	265 to 268	303 to 308
42 to 64	91 to 109	269 to 273	309 to 329
65 to 67	110 to 155	276	330 to 333
72 to 75	126 to 130	279 and 280	334 to 336
79	131 to 133	281 and 282	337 to 340
80	134 and 135	285	341 and 342
82	136 to 138	286	343
83	139	287	344 and 345
85	140 to 144	288 and 289	346
86	145	290 to 294	347 to 350
88 to 91	146	297	351 to 358
96	147	303	359 to 370
100 and 101	148 to 151	304 to 307	371 to 384
102 and 103	152 to 154	308	385 to 390
104	155 to 159	309	391 to 404
105	160	310	405
111	161	312	421
112 and 113	162 and 163	322	406 to 419
119	164 and 165	323 to 326	420
122	166	334	422
125	167	335 and 336	423 to 428
128 to 133	168 to 176 and 6 temporary.	339	429
		348	430
		349	431
141	177	358	432
142 and 143	178 to 180	361	433
144	181	375	434
146	182 to 184	389	435
152 to 154	185 to 187	390 and 391	436 to 440
168	188 to 191	393	441
169	192	396	442 to 448
172 to 174	193 to 198	397	449 to 456
184	199	398	457 to 462

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TRANSLATION

OF THE

GENERAL INSTRUCTIONS

FOR

DRAFTING PUBLIC DOCUMENTS SUBJECT TO RECORD

IN THE

SPANISH COLONIAL PROVINCES.

(1893.)

WAR DEPARTMENT.

1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

GENERAL INSTRUCTIONS FOR DRAFTING PUBLIC DOCUMENTS SUBJECT TO RECORD IN THE COLONIAL PROVINCES.

1893.

PREFACE.

The royal decree of August 13, 1893, approves the new general instructions for drafting public documents subject to record in the colonial provinces, to be substituted for the instructions which were in force under the title, "For the provinces of Cuba, Puerto Rico, and the Philippines," and are inserted after the notarial laws.

Although there are but few important changes introduced in the new instructions as far as their application is concerned, nevertheless we publish them here and they will be designated as Appendix VII of the notarial legislation of Cuba and Puerto Rico, and as Appendix IV of that of the Philippines.

COLONIAL DEPARTMENT.

ROYAL ORDER.

MOST EXCELLENT SIR: His Majesty, the King, and, in his name, the Queen Regent have deigned to approve the annexed "General instructions for drafting public documents subject to record in the colonial provinces," ordering at the same time all judicial and administrative authorities and officers, as well as notaries, upon whom their fulfillment may devolve, to begin to observe the provisions contained therein from the day on which the mortgage law of July 14 last goes into effect in the island or islands governed by you.

All of which, by royal order, I communicate to your excellency for your information and observance.

May God preserve you many years.

Madrid, August 13, 1893.

MAURA.

To the Governors-General of Cuba, Puerto Rico, and the Philippines.

GENERAL INSTRUCTIONS FOR DRAFTING PUBLIC DOCUMENTS FOR RECORD IN THE COLONIAL PROVINCES.

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE 1. Judicial and administrative authorities and officers, as well as notaries, who certify documents for record will note therein, under their own responsibility, all the circumstances required, according to the mortgage law and its regulations, in order to record them on the property registers.

ART. 2. The designation of every person appearing in any document or contract subject to registry will be made by stating his Christian name, his full paternal and maternal family name (although he may not be accustomed to use more than one of these), his age, whether married or single, profession, and domicile. If he should be known by a second name added to the first, this shall also be stated.

ART. 3. When one of the parties to a deed or public document represents a partnership, public institution, or corporation, or acts as a legal representative, the right by which he represents them must be noted on the document, with an explanation of the name and the character of said representation, and the domicile and all other circumstances relative to the personality of the representative, who shall subscribe the document in the name of the organization he represents.

ART. 4. Officers and authorities shall see that in the documents to which they certify there shall not be omitted, nor expressed in ambiguous language, so as to give rise to error or to prejudice a third party, any of the following circumstances:

First. The nature, situation, boundaries, and name and number, if there be such, of the estate to be recorded, or which is affected by the document which is to be recorded. The superficial area of rural estates will also be given; but that of town estates only when it appears on the documents presented or when the interested parties declare it.

Second. The nature, extent, conditions, and liens of whatsoever kind of the document which is recorded, and also the amount involved if this appears in the deed or if the parties declare it.

Third. The nature, extent, conditions, and liens of the property upon which the document to be recorded is based.

Fourth. The character and the date of the deed or contract which is being executed.

Fifth. The Christian and family names of the person in whose favor the document is constituted or declared.

Sixth. The Christian and family names of the person who transfers the ownership, or who constitutes, recognizes, or renounces the property subject to registry.

Seventh. The Christian and family names of the person who actually owns the estate transferred, or the right transferred, modified, or extinguished.

When the deed or contract is not recorded on account of some omission or mistake caused by fraud or carelessness on the part of the certifying officer, the latter will remedy the defect by making out a new deed at his own cost, if possible. Notaries shall, besides, indemnify the parties for any damage they may have caused them, within the terms prescribed by the mortgage law.

ART. 5. In describing rural estates, their situation and boundaries shall be determined with the greatest exactness and detail. For this purpose the name by which the estate is known should be given, and if it formerly had any other name, both should be mentioned; the township and judicial subdistrict or place where it is situated should be stated; its boundaries should be described in relation to the four cardinal points, preference being given to those boundaries which are marked by natural or artificial lines, rather than the simple designation of the names of the owners of contiguous estates; reference will be made to the roads leading to the property, being described whenever this may contribute to determine them, and, finally, mention will be made of all other signs which may prevent confounding it with other estates.

When the estate is in town, besides the name of the town and street, square, or place where it is situated, its number will be given; and if it formerly had a number which has been changed, both that and the present number will be given, and if it is not numbered at all, this omission shall be stated.

If the group of buildings to which the estate belongs should constitute a block or square, the number of the latter will be given, and if the block is known in the town by any name, this will also be stated; the boundary lines on the left, right, and rear will be indicated, as well as any other circumstance important to be known, in order to distinguish it from other properties.

ART. 6. When the area or extent of an estate has to be mentioned in a document, it may be done in the customary measures of the country; but there shall also always be stated the metric equivalents, and this will apply also if the parties are able to give only approximately the area or extent; and if they are not even able to determine the approximate area or extent, this fact will be stated in the document.

ART. 7. In every public document by which there is created, acknowledged, modified, or extinguished any property right having a recognized name in law, it shall be expressly mentioned, although the conditions stipulated by the parties to the document or deed may modify in some point the nature of the right, and give it more or less effect than that naturally appertaining to it according to law.

ART. 8. In every deed or contract which must be recorded, all liens or incumbrances on the realty must be mentioned in detail, for which purpose the officer certifying to the document shall not only carefully examine the titles in his possession, and those which are presented to him by the interested parties, but he shall also demand from them all documents they may have, which would show such liens or incumbrances.

If any liens are found which have not been satisfied because the persons in whose favor they stand are unknown, or for any other reason, the parties to the document may insist on having this circumstance noted.

In receipts for payment, cancellations of mortgages, and any documents which refer to others which are already recorded, and in which the incumbrances are noted, it will not be necessary to refer to them again.

ART. 9. Certificates of judicial decrees, rulings, and judgments which have to be recorded, must contain the date on which each one of the litigants was notified, with a statement from the clerk of the court certifying that the time for an appeal has lapsed without one being taken, or, if one was taken, that it was disallowed. The same applies to judicial mandates if they contain any ruling which has to be recorded or noted on the record.

The provisions of this article do not apply to judicial rulings, which according to the mortgage law and the law of procedure, must be recorded, whether or not they are final in character, or whether agreed to by the parties, or not.

ART. 10. Where mandates are issued directing the entrance on the record of attachments, ordered in civil or criminal cases, the judges of courts shall fix approximately the amount of costs likely to be incurred, and the cost of the stamped paper likely to be used during the proceedings, in order that the claims of the State, and of court officials, may be secured against any third party, who may subsequently acquire a property right in the estate attached.

ART. 11. Executory decrees which declare or recognize the ownership of real property, or any property right subject to registry, and those which modify the civil capacity of persons, which have to be recorded according to the mortgage law and its regulations, need not express in full all the details noted in the registry, unless they have some bearing on the point in litigation, in which case a clear and minute description of these details is indispensable.

ART. 12. A notary who authorizes a public document in which is declared or reserved some property right, in favor of a third party, who might be injured if the document were not recorded, shall carry out the provisions of the regulations for the observance of the mortgage law, and may demand the appropriate receipt from the register of deeds. This receipt will suffice to require the parties to the document to pay the legal notarial fees.

ART. 13. In every public document subject to record, the officer certifying it should state, that if the document is not recorded it will not be effectual against a third person nor be admitted in courts or tribunals, the council of government, or Government bureaus, if it be presented there for the purpose of enforcing against a third person, the document which should have been recorded. This does not apply to the two exceptional cases comprised in article 389 of the mortgage law.

ART. 14. Every document authorizing the cancellation of some registry or register's note, will be drawn in strict conformity with the provisions contained in titles 4 and 5 of the mortgage law and its regulations, and it will contain all the facts necessary, so that the record of cancellation may contain those designated in the said law. In all cases it will clearly set forth:

First. The right which is totally or partially extinguished.

Second. The name, status (whether married or single), age, vocation, and domicile of the person at whose request the cancellation is made, or whose consent is necessary that it may be validly made.

Third. The legal authority by which said person acts, if he be other than the one in whose name stands the record which is to be canceled.

Fourth. If the cancellation be only partial, the part of the real property disposed of, and the remainder, fixing its new boundaries, or, when necessary, the part of the obligation disposed of and the part remaining, always stating the cause of the curtailing of the property right.

ART. 15. Officers who certify to deeds or contracts subject to record, and in which there is no consideration set forth, will fix the value of the property or the property rights to which they refer, whenever this value is found from the title deeds, or is indicated by the parties to the instrument.

ART. 16. When, in case of deeds or contracts subject to record, the parties in interest neglect to present the documents which certify the ownership of the real property or property rights which are being transferred or encumbered, the deed will be specified, by virtue of which the real property or property right belongs to a certain person, in such case stating the liber and folio where such deed is recorded. This same provision will apply to writs of attachment against the property of a debtor.

ART. 17. Secretaries and clerks of superior and inferior courts, notaries, and administrative officers, will send every three months to the register of deeds of the subdistrict, an index of judicial and other documents subject to record to which they have certified.

This trimonthly index will contain:

The names of parties executing each document;

The nature and date of the instrument or contract;

The designation of the estate which is the subject of the instrument.

The said indices will not include documents which have had to be recorded in registers of other subdistricts; but the various secretaries of inferior courts and notaries, shall give notice of such documents to the respective registers of deeds.

CHAPTER II.

RULES COMMON TO INSTRUMENTS CERTIFED BY NOTARIES.

ART. 18. Public instruments shall contain all the general requisites of the law, especially of the notarial law and its regulations, as well as such details as may be required by each particular instrument or contract.

ART. 19. Notaries shall clearly and concisely word those clauses of documents in which are declared the rights and obligations of the parties, avoiding any unnecessary formula. They will endeavor to follow literally the minutes of contracts and the verbal instructions which are furnished by the parties; but if they should notice any ambiguity, confusion, or lack of clearness, they will notify the parties thereof, suggesting to them the wording which, in their opinion, would better express the sense of what may have been stipulated.

ART. 20. When the notes, minutes, or verbal instructions furnished by the parties for the drafting of the instrument or contract, fail to state some of the details which the registry should contain according to the provisions of the mortgage law and its regulations, the notary shall have the parties state such details; and if they will not or can not do so, he will relieve himself of responsibility by stating in the instrument that the parties, being informed of the advisability of such a statement, neglected to make it. The provisions of this article are to be so understood, that if the details omitted are necessary to the validity of the instrument according to the laws, the notary must refuse to draft and certify to said instrument.

ART. 21. Notaries shall omit all clauses which do not create, exempt from, modify, declare, or alter in any manner some obligation or right recoverable in court, omitting therefrom relinquishment of privileges conferred by laws, when such laws may not be by their nature relinquished, or which, being relinquishable, the desire of the parties to relinquish such privileges is not clearly manifested; also omitting any other superfluous or irrelevant clause.

ART. 22. Clauses will be drafted, duly separated into distinct paragraphs properly numbered, endeavoring to include in each one, such details as have some connection or analogy with each other.

ART. 23. Notaries are prohibited from certifying any public instrument executed by persons whom they do not know, or without having

previously assured themselves of their identity by the declaration of two witnesses having such knowledge.

ART. 24. Notaries shall state in every document that the parties have the legal capacity to perform the instrument or contract in question, which fact the notary will determine to his own satisfaction; it is not sufficient that he should record it in the instrument, relying solely on the declaration of the parties themselves.

ART. 25. Persons who shall execute any instrument or contract subject to record, shall designate the place where all of the notifications, citations, and other judicial or extra-judicial formalities are to be carried out, the necessity of which arises from the said instrument or contract.

ART. 26. Whenever property is alienated or hypothecated, which belongs to persons who have not the free disposal thereof, the notary shall assure himself that the requisites and formalities required by the laws have been executed, and he will cause this to appear in the document.

The same formalities must be gone through with, when annuities (censos), mortgages, or other property rights which are constituted in favor of said persons are canceled.

ART. 27. In every document by which the ownership of real property is alienated or encumbered, an express reservation will be made in favor of a legal mortgage, by virtue of which the State, the province, or the municipality, has preference over any other creditor for the collection of the last annual tax, which may have been levied and not satisfied by the said property.

If the property is insured, a similar reservation shall be made in favor of the insurer for the premiums due for the last two years, if they are not paid, or of the last two assessments, if the insurance is based on a mutual system.

ART. 28. In contracts in which there is a pecuniary or other valuable consideration, to the payment of which the notary does not certify, all renunciation of exceptions or favorable laws will be omitted, and in lieu thereof the notary will declare that he has notified the parties that, once the payment of said consideration is acknowledged, the estate or property right remains free of all responsibility by reason of the same, although at some future time it should be established, that the consideration is either wholly or partly unpaid.

ART. 29. In deeds of gift the notary shall state, by way of warning, that they shall not be rescinded to the detriment of a third party, except for reasons arising from the document itself or from its record in the registry.

When any gift of real property or property rights is revoked for any of the causes designated by the laws, the notary shall state that said revocation must be understood not to be detrimental to a third party who may have acquired and recorded the ownership of, or any right to,

said property. This warning will not be expressed when the revocation is founded on the donor's failure to fulfill some one of the conditions specified, for in such case it will prejudice the right of a third party, who may have previously acquired and recorded some title to the premises.

ART. 30. Notaries who certify to instruments by which the ownership of rural estates, which are known in Cuba under the name of "haciendas comuneras," is transferred or encumbered, shall require the parties to state therein the actual situation, superficial area, and the boundaries of the real property, or of the part belonging to each part owner after the proper titles or deeds have been exhibited, in order that the purchasers may enjoy the benefits granted them by the mortgage law.

ART. 31. No document shall be certified relating to the alienation of real property or property rights subject to pending conditions subsequent, except with the formalities and restrictions established in Title V of the mortgage law.

ART. 32. In every document in which is stipulated some obligation, subject to conditions precedent or conditions subsequent, the notary shall state that he has informed the parties that the fulfillment of said conditions, when accomplished, will not be detrimental to a third person, if it is not made to appear on the registry.

The notary will make, and state that he has made, a similar warning concerning amounts which may remain unpaid on account, or for the full payment of the selling price, or concerning the payment of differences in the exchange or award of payments.

ART. 33. In every deed of sale of a part of an estate encumbered with previous mortgages, in which the purchaser wishes to enjoy the benefits stated in the second paragraph of article 112 of the mortgage law, it will be made to appear by means of the proper proofs that the portion of land sold does not contain any movable machinery, object, or building of any kind, with a concise statement also of the previous incumbrances which burden the entire estate, and also the said part of the estate.

CHAPTER III.

RULES CONCERNING INSTRUMENTS VOLUNTARILY CONSTITUTING MORTGAGES.

ART. 34. Every mortgage, besides the details which are determined by these instructions, as a general rule, shall express the following:

(1) The obligation, for the security of which said mortgage is constituted, endeavoring to describe it so clearly that there can be no doubt as to its nature and quantity.

(2) The term, dates of payment, and conditions of said obligation, stating its maturity, with the utmost clearness and precision.

(3) The amounts for which the estate which is mortgaged is in any way responsible, in the manner hereafter indicated.

(4) The rate of interest agreed upon, or a statement to the effect that the principal shall bear no interest.

(5) The appraised value of the estate as fixed by the contracting parties, and the waiver of any new valuation or action with this object in view.

ART. 35. No prohibitory clause shall be incorporated in any mortgage, forbidding the incumbrance of the mortgaged estate, with another and new obligation of the same or of different character.

In the proper place it may be stated, that every subsequent mortgage has to be subordinate to the one now being made, it being understood that in case said subsequent mortgage should fall due before the maturity of the previous obligation, and the property be sold, the total amount of said previous obligation, together with the interest already due and that not yet matured, will first be deducted from the proceeds of the sale, and only the surplus shall be applied to the satisfaction of the mortgage fallen due.

ART. 36. In drafting mortgages on an estate already encumbered by a previous mortgage, the notary shall warn the parties that, in case of the judicial sale to pay the first mortgage, if the property shall not bring on the foreclosure more than the amount of the first mortgage, it is understood that the subsequent mortgage shall be considered canceled in fact and in law, without prejudice to the right of a personal action against the debtor.

ART. 37. Notaries shall not incorporate in any document, even if the contracting parties should demand it, a general clause, by virtue of which all the present and future property of the debtor is mortgaged, as security for the fulfillment of the stipulated obligations.

ART. 38. Powers of attorney to mortgage property may be given, either limited to one particular estate or for all the properties the maker possesses, and in both cases, upon such conditions as the owner chooses to impose.

Powers to cancel mortgages constituted in favor of the grantor of the power, shall be conferred in the same terms.

ART. 39. Notaries shall not acknowledge any instrument or contract, which attempts to encumber properties which, according to the mortgage law, can not be mortgaged, or which can be mortgaged only with certain formalities and under certain restrictions, unless such formalities and restrictions have been complied with.

ART. 40. Mortgages hypothecating buildings erected on another's land, shall necessarily contain a statement to that effect, besides the fact that said mortgage is limited only to the rights of the owner of the building, and shall not affect the rights of the owner of the land.

In case of mortgaging superficial rights, pastures, waters, timber, or other similar real property rights, a statement must be made in the instrument, that the rights of the other participants in the estate are safeguarded.

ART. 41. The instrument by which estates in use are mortgaged, shall state that the mortgage shall be extinguished upon the extinguishment of said use, in case such extinguishment be brought about through some act independent of the will of the grantee of such rights; and that, if the use should be terminated by a voluntary act of the grantee of said right, said mortgage will be in full force, until the obligation secured by it be fulfilled, or until the time when such use would naturally have come to its end, if not interfered with by the act which terminated it.

ART. 42. In an instrument mortgaging only the bare ownership of an estate, there must be stated the fact that as soon as the use shall be merged with the property right, the effects of the mortgage will be extended to the use, unless the parties shall otherwise stipulate, which stipulation must necessarily appear in the instrument.

ART. 43. When railroads, canals, harbors, or other works of public utility with Government concession for ten years or more are mortgaged, there shall be incorporated in the instrument, all the facts required by the general instructions for the execution of the mortgage law, and, besides, the fact that said mortgage ends upon the termination of the concessionary's rights.

ART. 44. In every mortgage contracted to secure a future obligation or an obligation subject to conditions precedent, recorded or to be recorded in the registry, the notary shall state that the mortgage will affect the rights of a third party, from the date of its record, in case the future obligation be satisfied or the condition be complied with.

If the obligation thus secured be subject to a condition subsequent entered upon the registry, it shall be expressed in the instrument, that said mortgage shall be valid as against a third party, until the fulfillment of the condition appears upon the registry.

ART. 45. In cases when a mortgage is given as security for a loan, the notary shall warn the parties that the interest upon such loan will not be protected unless it is expressed in the instrument, and then only for two years last passed, and for the part of the interest due during the current year.

ART. 46. In all cases when a mortgage is given as security for a loan bearing interest, the notary shall state his having warned the creditor that he will have no right to recover by foreclosure, to the prejudice of the rights of a third party, more back interest than that equal to the last two years, and that part of the interest due during the current year, the right of a personal action against the debtor being reserved to the creditor, to demand the interest accrued during other years, or to ask for an increase of the mortgage.

ART. 47. No instrument constituting a mortgage, annuity (censo), or investment of capital bearing interest shall be made out without stipulating therein the amount secured by the estate or the mortgaged right.

When the amount to be secured is not fixed or liquidated, the notary shall request the contracting parties to fix the amount approximately, cautioning them that the sum thus fixed, will be the only extent of the

responsibility of the property, so far as the rights of third parties are concerned, the rights of a personal action against the debtor being, however, in all cases reserved.

The foregoing provisions do not apply to the instruments, the object of which is to record notice of an unliquidated agricultural loan, in which case the provisions of the mortgage law and its regulations shall be observed.

ART. 48. Nor shall notaries certify to any instruments mortgaging various properties or imposing an annuity (censo) upon them, without indicating the part of the principal and interest, for which each piece of property shall be responsible.

If the mortgage shall guarantee other pecuniary liabilities besides the principal, a statement to that effect shall be made at the same time, showing the extent of the liability of each piece of property.

Notaries shall demand from the contracting parties, that they distribute the principal and interest among the encumbered estates if they have not previously done so, cautioning the contracting parties, and stating the fact in the instrument, that each property separately is not responsible, to the prejudice of the rights of third parties, for more than the amounts respectively assigned, reserving the creditor's right of action against any of the properties for the part of the debt which one of the other properties should not cover, if this does not prejudice the said rights of third parties, according to the provisions of the mortgage law.

The same distribution should be made of the remaining fixed and determined pecuniary liabilities, which should be guaranteed by the mortgage, such as the payment of court costs and indemnity for damages in case of legal proceedings.

ART. 49. In cases of instruments by virtue of which the purchaser of an estate, with the right of repurchase, mortgages the amount he should receive in case of resale, the notary shall state the obligation of the contracting parties to give notice of the mortgage to the seller, in order that if the estate be repurchased before the cancellation of the mortgage, the price will not be paid without the knowledge of the creditor, or without the previous order of the court.

When the vendor of an estate, with the right of repurchase, mortgages the difference between the value of the estate and the sum he has to repay the vendee in case of resale, the notary shall caution the mortgage creditor that he will have no right to proceed against the mortgaged estate, without having previously repurchased it in the name of the debtor, within the time the latter has the right to do so, having advanced the sum of money necessary for the purpose.

ART. 50. Assignments of debts secured by mortgages shall contain:

1. The Christian name, family name, age, status (whether married or single), and residence or domicile of the assignor, assignee, and of the debtor.

2. A true copy of the mortgage assigned.

3. The character and conditions of the debt thus assigned.

4. The amount of the assignment.

5. The statement that notice shall be given to the debtor of this contract.

Of every assignment of mortgage, notice to the debtor shall be given in all the cases, and with all the formalities prescribed by the mortgage law and its regulations.

ART. 51. Every holder of a mortgage voluntarily made, can in his turn, mortgage this right, securing another obligation, according to the same law.

Such instruments shall contain—

1. The Christian name, the family name, age, status (whether married or single), and the domicile of the contracting parties and of the debtor.

2. A verbatim copy of the mortgage that is being given as security.

3. The character and conditions of the instrument or contract which creates this new mortgage.

4. The amount of the sum thus secured.

5. The statement that this second mortgage depends upon the payment of the first.

CHAPTER IV.

GENERAL RULES AS TO THE MAKING OF LEGAL MORTGAGES.

ART. 52. No legal mortgage shall be certified to, unless it be attested and admitted by the person having either the obligation, or the right to make it, according to the cases provided for by the mortgage law.

ART. 53. The notary certifying to any instrument or contract made by a guardian, a dowry, matrimonial gifts, property to be set apart, or property belonging to minors, or any instrument or contract by virtue of which a given property is adjudicated to a widower or a widow in payment of the right of a surviving spouse, shall explain to the party in whose favor, by reason of the instrument, the rights of the legal mortgage are vested, if present at the time, his or her right to demand the execution of a sufficient special mortgage; and he shall explain to the party who is burdened with that obligation, if present at the time, the duty that the law imposes upon him to grant said guaranty, in a proper case, if he possesses mortgageable property. The notary shall also caution the interested parties, that as long as the mortgage be not executed and recorded, the rights of third parties recorded previously, will not be prejudiced.

Besides, the notary shall state in the same public document, that he has conformed with all the requirements of this article.

ART. 54. If the person in whose favor the legal mortgage mentioned in the preceding article is drawn, be a married woman, a minor, a ward, or a person without legal capacity, and a special mortgage be not executed, or if executed should be insufficient, the notary shall report the

instrument executed within the eight days next following to the register of deeds of the subdistrict, by means of an official communication containing a short statement of the obligation entered into, names, occupation, status (whether married or single), and the domicile of the contracting parties, and the reply which they have given to the notary's cautions in regard to legal mortgages.

ART. 55. A proper legal mortgage may be constituted in every deed by virtue of which a dowry is created, marriage gifts are granted, or personal property distinct from the marriage portion (bienes parafernales) are given to the husband.

In case no legal mortgage be constituted, mention must be made of one of the three following facts:

That said mortgage will be constituted by a special instrument.

That the married woman, being of age and possessed of a dowry, did not demand the corresponding dowry mortgage, although advised by the notary as to her rights in this respect.

That the husband has made a declaration under oath, that he does not possess mortgageable property to secure the dowry, gifts, or personal property distinct from the marriage portion (bienes parafernales), accepting at the same time the obligation to mortgage the first real estate he may acquire.

ART. 56. In every instrument by virtue of which there is granted a dowry, the amount of which is not determined, in personal property or chattels, the value of all the property shall be stated, mentioning the fact that its valuation is not made for the purposes of a sale, its only object being to fix the amount, the payment of which shall be secured at the proper time by a mortgage.

ART. 57. In every instrument by which gifts are given to a woman by reason of her marriage, it must necessarily appear whether such gifts are given as an increase of dowry or not. To this end, the notary shall put the proper questions to the contracting parties, explaining their rights to them in each case: namely, in case the offer be made as an increase of the dowry, it creates a legal mortgage, and in case of the omission of the said statement, the gifts can be recovered only by a personal action.

ART. 58. In each deed of dowry by virtue of which real property is being conveyed to the husband, besides the general details, there must be incorporated the following:

1. Whether the marriage has been agreed upon, or has been already celebrated, in the latter case stating the date thereof.

2. The Christian name, family name, the previous status (whether married or single), age, and residence or domicile of the wife.

3. Whether the amount of the dowry is fixed or not.

4. Amount of the dowry and the property constituting it.

5. The value of each estate and of all other property.

6. The statement that the title is conveyed to the husband subject to provisions of the law, but this only in case the amount of the dowry is fixed, and in case the value of the dowry be not fixed, the husband

is obliged to make restitution of such of the same real estate as may remain in his power at the time of the dissolution of the marriage.

7. A statement that the notary has explained to the wife her right to demand from her husband a legal mortgage, securing the restoration of her property not previously secured by mortgage, and to the husband his obligation to record the dowry, and to mortgage its real estate for its security, if its amount be fixed.

8. He will certify to its proper delivery in case it were made at the time, or otherwise, the declaration of having previously received the property, together with a verbatim copy of the documents certifying to such delivery, if made before the celebration of the marriage or within the first year following.

ART. 59. The mortgage of the dowry, besides the details included in the foregoing article, and those that every voluntary mortgage must contain, shall also state the following:

1. The Christian name, the family name, and the representation of the person who demanded the execution of said mortgage, or a statement that the husband has voluntarily executed the mortgage.

2. A short account of any judicial proceedings which may have been instituted in the premises, with a verbatim copy of the judgment.

3. A declaration from the person who possesses a legal right to make it, that the mortgage is deemed sufficient, and the agreement to accept it.

ART. 60. The deeds increasing the dowry shall conform in regard to their wording to the rules established in the preceding articles for the dowry instruments.

ART. 61. Every public instrument by virtue of which there is being acquired property to be set apart, shall necessarily state this fact, and also that the grantee has been cautioned as to his obligation to secure by mortgage the title and preservation of said property.

The notary shall besides give notice to the register of deeds, in the manner provided by article 54 of these regulations, if the person having the right to the mortgage, be of age.

ART. 62. The mortgage for securing property to be set apart shall be executed in the proceedings as provided for by the mortgage law and its regulations, and by means of an instrument which must be signed by the person whose duty it is to secure the mortgage, if the latter be of age; and if not of age, it shall be signed by the person soliciting the execution of said mortgage, and by the certifying officer.

The mortgage, having been thus drawn, must be approved by the judge who had charge of the record.

ART. 63. The instrument mentioned in the preceding article shall contain, besides all the details of the voluntary mortgage, the following:

1. The date when the father or mother contracted a new marriage, or the date of birth of an illegitimate child, and in a proper case the date of the acceptance of the property by the ascendant referred to in article 199 of the mortgage law.

2. The Christian name and the family name of the deceased spouse, or that of the descendant in a proper case and the date of his death.

3. The names and the ages of each and every child or relative having a right to property to be set apart.

4. The title upon which said right is based.

5. The description and value of the property to be set apart.

6. The Christian name, the family name, age, and residence or domicile of the person who may have solicited the execution of the mortgage, if the father, mother, or ascendant shall have failed to do so voluntarily.

7. The statement whether or not the mortgage offered be sufficient, and in the latter case an affidavit that the father, mother, or ascendant does not possess other mortgageable property, together with an obligation of the above-stated persons to mortgage the first realty acquired.

ART. 64. Every public instrument, by virtue of which a minor acquires property, the administration of which belongs to the father or mother, must necessarily state such fact, and also that the contracting parties have been informed of their duty to record said real estate in such capacity. In a proper case the father or the mother shall secure the remainder of the property by mortgage, if either should remarry.

ART. 65. When the father or mother are parties to the instrument, by virtue of which a minor acquires personal property or chattels to be managed by the said father or mother, they may constitute in the same instrument, the mortgage that secures the preservation of the said property.

ART. 66. Mortgages of property of minors shall state all the facts which a voluntary mortgage must contain, and also the following·

1. Age of the minor, and status (whether married or single).

2. The source from which the property comes.

3. Description of the property and its value, or the approximate value, for the purpose of executing the mortgage.

4. That the mortgage was voluntarily executed by the father or mother, or by virtue of a judicial decree, and at whose instance.

5. That the mortgage is or is not sufficient, and in the latter case the declaration of the father or mother that they do not possess other mortgageable property, together with the obligation of mortgaging the first real estate acquired.

ART. 67. The mortgage arising from a guardianship shall state, besides the fact of the voluntary mortgage, the following:

1. The Christian name, family name, age, status (whether married or single), occupation, and the residence or domicile of the guardian.

2. The name of the person who appointed him.

3. The order making said appointment and its date.

4. The character of the guardianship.

5. The fact that there has been no exemption from the obligation to give bond, or that although there was such exemption, the family council had deemed it necessary to demand it.

6. The amount of the principal, income, and benefits belonging to the orphan or a person without legal capacity, separating the part consisting of real estate and that consisting of other property.

7. The amount of the bond required.

8. The list of the real estate offered as security, the value of each, and their incumbrances, and the deeds of the last transfer, with reference also to the title deeds and certificates of the registry, and of such appraisements as may have been made.

9. The execution of a mortgage, for the amount of the bond as fixed, and the designation of the amount for which each estate is mortgaged, according to the apportionment that may have been made.

10. Copy of the resolution of the family council approving the bond.

FINAL DISPOSITION.

ART. 68. Officers violating any of the provisions contained in these regulations, shall be called to account and punished by their immediate superiors, in accordance with the laws and regulations, and at such time as the commission of said violation may come to the knowledge of said superiors.

Notaries will besides be subject to the responsibility imposed by article 22 of the mortgage law.

Approved by her Majesty.

(Signed) MAURA.

Madrid, August 13, 1893.

TRANSLATION

OF

THE NOTARIAL LAWS

IN FORCE IN

CUBA AND PUERTO RICO

(1888.)

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT,
July, 1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

NOTARIAL LAWS IN FORCE IN CUBA AND PUERTO RICO.

DECREE.

The Government of the Republic, in conformity with the suggestion of the colonial secretary, decrees the following:

FIRST AND LAST ARTICLE. Notaries of the islands of Cuba and Puerto Rico shall be governed by the organic law and by the annexed regulations.

Madrid, October 29, 1873.

The President of the Government of the Republic,

EMILIO CASTELAR.

The Colonial Secretary,

SANTIAGO SOLER.

NOTARIAL LAW.

TITLE I.

NOTARIES.

ARTICLE 1. A notary is the public official authorized to certify contracts and other extrajudicial instruments in accordance to law.

There shall be only one class of these officials.

ART. 2. A notary who, on being requested to certify to any public or private extrajudicial instrument, should refuse his services without just cause, shall incur the liability which may be proper in accordance to the law.

ART. 3. Each judicial subdistrict constitutes a notarial district, within which there shall be created the number of notarial offices considered necessary for the public service, taking into consideration the population, the frequency and facility of transactions, the circumstances of the locality, and the befitting maintenance of the notaries.

ART. 4. At the time of the creation of the notarial offices the Government shall fix the residence of each one of the notaries, hearing the audiencia, the governors of the islands, and the board of directors of the notarial association, respectively, and can not subsequently make any changes in the limits without hearing said bodies and the treasury and colonial section of the council of state.

ART. 5. Every notary shall make his own protocol.

ART. 6. In the case of the death, sickness, absence, disqualification, or any other disability of a notary, the person who at the time of the creation of the notarial offices was designated for this purpose, shall take charge of the protocol and substitute him.

When this is not possible for any reason whatsoever, the judge of first instance shall appoint a temporary substitute from among the notaries of the same town or of the nearest ones until the decision of the presiding judge of the audiencia.

The substitute shall cease to discharge his duties as soon as the new appointee takes possession or the disability of the notary whom he substitutes ceases to exist.

ART. 7. The residence of the notaries must be the place designated at the time of the creation of the respective notarial office.

ART. 8. Notaries may practice within the notarial district in which their office is situated, in the manner which will be stated in the regulations.

ART. 9. Towns where there is more than one court of first instance shall be considered as only one judicial subdistrict.

TITLE II.

REQUISITES TO OBTAIN A NOTARIAL OFFICE AND TO ISSUE CERTIFICATIONS.

ART. 10. To be a notary it is necessary—

To be a Spaniard and of age.

To have good habits, and have pursued the studies and have complied with the other requisites prescribed by the laws and regulations, or to be a lawyer.

ART. 11. The notaries of the islands of Cuba and Puerto Rico shall be appointed by the president of the executive power of the Republic, at the suggestion of the colonial department.

ART. 12. Notarial offices shall be filled by competitive examinations, or competition for promotion, in the manner which will be prescribed by the regulations.

ART. 13. All other means to obtain a license are hereby abolished.

Notaries shall pay, in order to practice, the tax to which the other similar professions are subject.

ART. 14. Notaries, before taking possession of their office, shall give a guaranty as security for the discharge of the duties thereof.

Said guaranty may consist of a deposit in the treasury of the State in coin or in bonds of the public debt, or either in agricultural or town property mortgaged for the purpose, guaranties which produce an annual income, the interest on which shall be fixed by a special decree, according to the conditions of each locality.

ART. 15. No oath of any kind shall be required of notaries in order for them to enter upon their duties.

Possession shall be given them by the board of directors of the notarial association.

ART. 16. The duties of the office of notary are incompatible with all other offices which carry similar power, with any other public office which carries with it a salary or gratuity out of the general, provincial, or municipal appropriations, and with offices which require them to reside away from their domicile, excepting those of Deputies to the Cortes or provincial deputies, as the case may be.

TITLE III.

PROTOCOLS AND COPIES OF THE SAME CONSTITUTING A PUBLIC INSTRUMENT.

ART. 17. Notaries shall prepare original instruments, issue copies, and make protocols.

An original instrument is the one which a notary must execute on the contract or instrument submitted for his authentication, signed by the parties interested, by the attesting witnesses, or if proper, by the witnesses who identify, and signed and marked by the notary himself.

A first copy is the transcript of the original instrument which each of the parties interested has a right to receive for the first time.

By protocol is understood the collection, in proper order, of the original instruments authenticated during one year, which shall be included in one or more bound volumes, folioed by the number written out, and with the other requisites prescribed in the regulations.

ART. 18. Second or subsequent copies of an original instrument can not be issued except by virtue of a judicial mandate, and with the citation of the persons interested, or of the department of public prosecution when the latter are unknown or absent from the town in which the notarial office is situated.

Said citation shall be unnecessary in unilateral instruments, and even in others, when all the persons interested request the copy.

ART. 19. Notaries shall authenticate all public documents with their signature, and with the rubric and mark they may select for the purpose and which they can not subsequently change without authority from the Government.

In every audiencia there shall be kept a book in which notaries shall enter their signature, rubric, and mark before entering on the exercise of their duties.

ART. 20. Notaries can not authenticate any public instrument *inter vivos* without the presence of at least two witnesses.

ART. 21. Relatives, clerks, or servants of the notary issuing the certification can not be witnesses to public instruments.

Neither can the relatives within the fourth degree of consanguinity or second of affinity of the persons interested, nor those of the notary be witnesses.

ART. 22. No notary can authenticate a contract which contains a provision in his favor, or to which any of the parties interested is a relative of his within the fourth civil degree or second of affinity.

ART. 23. Notaries shall certify in public instruments that they are acquainted with the parties thereto, or that they have assured them selves of their identity by the declaration of the attesting witnesses, or by two other persons who are acquainted with them, and who shall, therefore, be called witnesses of identification.

They shall also certify as to the residence and profession of the parties interested.

In serious and extraordinary cases in which it is not possible to state this data in full, they shall state what they themselves know on the subject and what is declared by the attesting witnesses and those of identification.

ART. 24. In all public instruments the notary shall state his name and residence, the names and residences of the witnesses, and the place, year, and day of the execution of the instrument.

ART. 25. Public instruments shall be drafted in the Spanish language, and shall be clearly written, without abbreviations and without blank spaces.

In the statement of dates or amounts therein, figures shall not be used.

Notaries shall certify to having read the instrument in full to the parties interested and to the attesting witnesses, or, to having permitted them to read it, as they chose, before they signed it, and to the witnesses of identification the part that refers to them, and to having informed them all that they have a right to read it themselves.

ART. 26. Additions, marginal notes, interlineations, erasures, or blots in original instruments shall be of no effect if they are not mentioned at the foot of the instrument and expressly approved of by the persons interested, and bear the signatures of the persons who must subscribe the instrument.

ART. 27. Public instruments shall be null:

1. When they contain any provision in favor of the notary who authenticates them.

2. In which relatives of the persons interested or the relatives, clerks or servants of the said notary appear as witnesses, in the degree mentioned.

3. In which the notary does not certify to being acquainted with the persons interested, or in which he does not state this fact in the manner prescribed by article 23 of the law, or in which the signatures of the interested parties and witnesses do not appear when they are required to sign, and the signature, rubric, and mark of the notary.

ART. 28. Provisions in favor of relatives of the person who authenticated the document containing the same, within the degree previously mentioned, shall have no effect.

ART. 29. The provisions contained in the foregoing articles, relative to the form of the instruments and the number and qualifications of the witnesses, and to the capacity to receive what has been left or willed by the testator, are not applicable to wills and other provisions *causa mortis*, in which the special law or laws governing the matter shall be observed.

ART. 30. Instruments authenticated by a notary shall be admitted as evidence within the district of the audiencia in which he resides.

In order to be admitted as evidence outside of said district the signature of the notary who authenticated the instrument must be certified to by two other notaries of the same judicial subdistrict, and countersigned by the judge of first instance, who shall affix the seal of the court.

ART. 31. Only the notary legally in charge of the protocol may issue copies thereof.

ART. 32. Neither the original instrument nor the book of the protocol may be removed from the building in which they are kept, not even by virtue of a judicial mandate or superior order, except for transfer to the proper archives and in cases of *force majeure*.

However, an original instrument may be separated from the protocol if there appears sufficient reason or cause to consider it as proof of a crime, a previous order of the court taking cognizance of the case being necessary, and a verbatim certified copy in any case being issued with the consent of the department of public prosecution.

Neither shall notaries permit any documents to be taken from their archives which are under their charge by reason of their office, nor shall they permit it or the protocol to be examined, in whole or in part, without a previous judicial decree, except by the interested persons who have an acquired right, or their heirs or legal representatives. However, in the cases determined by law and by virtue of a judicial mandate they shall exhibit in their archives the protocol or protocols, in order to attend by virtue thereof to the proceedings that may have been agreed upon.

ART. 33. Notaries shall forward through the judge of first instance to the presiding judge of the audiencia, within the first eight days of each month, indices of the original instruments executed during the previous month, stating the ordinal numbers which the latter bear in the protocol.

In the indices there shall be stated, with regard to each instrument, the name of the parties thereto, that of the attesting witnesses, that of the witnesses of identification, in a proper case, the date of the execution, and the purpose of the instrument or contract.

ART. 34. Notaries shall keep a private book, in which they shall enter with the proper numeration a copy of the wrappers of sealed wills and codicils the execution of which they may have authenticated, and the protocols of the open wills when the testators request it, and they shall

forward a private index to the presiding judge of the audiencia, through the judge of first instance, as prescribed in the preceding article. It is not necessary that there be one book for each year.

ART. 35. They shall further keep a private protocol, in which they shall enter original instruments recognizing illegitimate children when the persons interested do not desire to have them appear in the general protocol. They shall also transmit a private index of the instruments thus recorded to the presiding judge of the audiencia through the channel mentioned, and they shall not be required to form a different protocol for each year.

TITLE IV.

OWNERSHIP AND CUSTODY OF PROTOCOLS AND INSPECTION OF NOTARIAL OFFICES.

ART. 36. The protocols are the property of the State. Notaries shall keep them, in accordance with the laws, as archivists thereof, and under their responsibility.

ART. 37. There shall be in each notarial district general archives of public instruments, subject to the prescriptions of the regulations.

ART. 38. In the case of the vacancy of a notarial office and of the disability or incapacity of a notary, the person who, in accordance with article 6, is to take charge of the office, shall receive the protocols and other documents in accordance with an inventory, in order to return them, with the same formalities to the said notary, if he is reinvested in his office, or otherwise to his successor in office. The judges of first instance in seats of subdistricts and the justices of the peace in other towns shall be present when the inventory is taken and at the delivery.

ART. 39. In case of a partial or complete destruction of a protocol, the notary shall make a report to the judge and to the *promotor fiscal* of the subdistrict, and the latter to the presiding judge and *fiscal* of audiencia respectively, in order that the proper proceedings having been instituted with a citation of the parties, the indices and the books compared, and any other data which may be proper, examined, the protocols and books be restored as far as practicable.

ART. 40. Judges of first instance shall, whenever they consider it advisable, inspect the notarial offices situated within their subdistricts.

The government and presiding judges of the audiencias may order extraordinary inspections, for which they shall only appoint associate justices, judges or representatives of the department of public prosecution.

TITLE V.

GOVERNMENT AND DISCIPLINE OF NOTARIES.

ART. 41. All the notaries of the jurisdiction of each audiencia shall form notarial associations.

ART. 42. The associations shall be directed by boards, and the judicial authority, the department of public prosecution, delegated by the Government, shall have the authority therein which will be established by the regulations.

ART. 43. For offenses against discipline and others which may affect the honor of the profession, the boards of directors of the associations may censure the notaries, reprimand them in writing, and administratively punish them by fines not to exceed 50 pesos. In cases of second offenses they shall report to the audiencias, which may impose fines not to exceed 200 pesos, besides advising the colonial department thereof, in order that a memorandum may be made in the respective records of the notaries, all without prejudice to any proceedings which may be just and other disciplinary powers of the judges and audiencias.

ART. 44. Notaries can not be suspended or removed from office by governmental order.

TITLE VI.

FEES AND REMUNERATION OF NOTARIES.

ART. 45. Notaries shall earn the fees fixed in the notarial schedule which shall be arranged for the purpose.

ART. 46. A notary who is incapacitated from exercising his profession on account of rescuing the protocols from flood, fire, or other *force majeure*, shall be entitled to a pension.

Should he die for the same reason, his widow and minor children shall have the same right.

GENERAL PROVISIONS.

ART. 47. All that is prescribed in the foregoing articles and in the annexed regulations shall be observed in the islands of Cuba and Puerto Rico from April 1, 1874.

The laws, provisions, and customs relating to the organization of notarial offices shall cease from this date to be observed and shall be considered repealed.

TEMPORARY PROVISIONS.

1. All persons who, at the time of the publication of these provisions, are, by virtue of the proper certificate, issuing both judicial and extrajudicial certifications, shall continue to exercise the same duties.

2. Proceedings actually being held pending decision, shall be decided in accordance with the laws and provisions in force at the time they were instituted.

Madrid, October 29, 1873.

The Colonial Secretary,

SANTIAGO SOLER.

ORGANIC NOTARIAL REGULATIONS FOR CUBA AND PUERTO RICO.

TITLE I.

NOTARIAL OFFICES.

ARTICLE 1. In notarial offices there shall not be comprised territory located in different judicial subdistricts, with the exception of towns where there is more than one court of first instance, which shall be considered as one only.

ART. 2. All the notarial offices of each judicial subdistrict shall form a notarial district.

ART. 3. Notarial districts constitute the jurisdiction of the notarial association of each of the audiencias of the islands, respectively.

ART. 4. The number of notarial offices and their seat or place of residence of each notary shall be the ones designated in a special decree.

TITLE II.

APPLICANTS FOR NOTARIAL OFFICES, DECLARATION OF VACANCIES, AND THEIR PROVISION.

ART. 5. In order to aspire to the diploma to act as a notary, besides the qualifications prescribed by article 10 of the law, it is necessary to have no permanent physical impediment or defect preventing a full discharge of the duties of said office.

ART. 6. Notarial offices become vacant—

1. By transfer.
2. On account of the existence of permanent physical disability or moral incapacity, declared by virtue of administrative proceedings.
3. By a final judgment sentencing to perpetual, absolute, or special disqualification for the office of notary.
4. By the abandonment of the office.
5. By an accepted resignation.
6. By death.

ART. 7. After a notarial office has been declared vacant, its provision shall be announced in the official newspapers of the provinces included within the jurisdiction of the notarial association.

ART. 8. Vacancies, no matter what reason causes them, shall be filled, one by competitive examination, and another by transfer, two series within the jurisdiction of each notarial association being established for this purpose.

In all cases the applicants shall present their written applications to the dean of the notarial association, within the period of thirty current days, to be counted from the day following the publication of the last announcement of the call.

ART. 9. The competitive examinations shall be held in the seat of the association and in the building designated for the purpose by the presiding judge of the audiencia.

The board of examiners shall be composed of:

An associate justice, who shall preside as the delegate of the presiding judge of the audiencia, by whom he shall be appointed.

A professor of notarial law, or in his place a professor of another branch of law, appointed by the rector of the university.

A practicing lawyer, selected by the presiding judge of the audiencia.

In the absence of the professor another lawyer.

The dean of the notarial association.

The secretary of the board of directors of the said association, who shall also act as secretary of the board.

ART. 10. Applicants shall be admitted to the competitive examinations in the order of presentation of their applications, for which purpose the secretary of the board shall make a signed memorandum on the former, stating the day and hour of presentation. The board shall call the opponents by stating the day, hour, and location in advance and giving the announcement due publicity. The applicant who, for any reason whatsoever, does not appear, shall lose his turn and be the last one. Should he not present himself then, he shall be considered as having abandoned it; but if he should duly prove that he was ill, or any other creditable cause, another period shall be granted him, which cannot be extended.

ART. 11. The competitive examination shall consist of two parts—a theoretical one and a practical one. Both parts shall be public.

For the theoretical examination 100 questions shall be placed in a box referring to theory and practice of notarial legislation, Spanish civil law, colonial legislation, mortgage legislation, duties of notaries, and general principles regarding the drafting of public instruments. The competitor shall draw eight questions by lot and shall answer them immediately, being allowed forty minutes for this examination; and should he conclude before they have elapsed, he may enlarge on the points he may select.

For the practical examination the opponent shall draw by lot one of fifty slips of paper contained in a box, which shall include the same number of subjects, in order to execute a public instrument to be drafted at once by the opponent, and when delivering it to the president he shall state what is to be done until the instrument is included in the protocols and the first copy is issued.

The examiner of the board shall make no announcement or observation to, nor ask any question of, the opponent regarding the subject-matter of the examinations.

ART. 12. At the end of the competitive examination the board shall make the classification behind closed doors, and, taking into consideration the results of the examination, shall designate the competitors approved of as excellent, very good, good, or fair.

A classification shall be made for each notarial office, and also a list of three persons, both of which shall be forwarded to the colonial department through the presiding judge of the proper audiencia.

ART. 13. The Government shall appoint one of the three persons contained in the list.

ART. 14. The proceedings for the filling of vacancies in notarial offices by competition for promotion or transfer, shall be instituted in the colonial department. The applicants shall present their petitions through the board of their respective association within the period of the call, which, besides the announcement prescribed in article 7, shall be published in the *Gaceta de Madrid.*

The Government shall be free to select one of the applicants; but in no case shall they appoint a notary who has not served in his office for four years at least, to a vacancy of a higher class.

Notaries of Cuba and Puerto Rico, as well as those of the Peninsula and the Balearic and Canary Islands, may apply for said transfers.

ART. 15. All appointments of notaries made either by virtue of competitive examinations or by competition for promotion shall be published in the official newspapers of the territory of the proper association, stating the article of the law or of the regulations by virtue of which the appointment was made.

TITLE III.

DIPLOMAS, LAPSE OF APPOINTMENTS, BONDS, POSSESSION, AND OFFICIAL INSIGNIA OF NOTARIES.

ART. 16. Notaries-elect shall be allowed three months to secure their diplomas, computed from the date of the official publication of their appointment.

Should they not do so, they shall be understood to have renounced their right, and their appointments shall lapse, unless they have obtained an extension for just cause.

ART. 17. After the appointment of a notary has lapsed, in case of a competitive examination as well as that of a transfer, said vacancy shall be filled by one of the other applicants who applied at the time the first one was appointed.

Should the last appointment also lapse, the vacancy shall be announced and filled according to the series to which it corresponds.

ART. 18. A notary-elect shall not obtain his diploma without previously constituting the guaranty referred to in article 14 of the law, and presenting the document proving said constitution.

ART. 19. Diplomas of notaries shall be prepared in accordance with

the form which shall be adopted for this purpose by the colonial department.

ART. 20. A new diploma shall be issued to every notary transferred, who shall annex it to the one he may have previously obtained, at the foot of which the presiding judge of the audiencia shall make a memorandum of cancellation.

ART. 21. When the notary obtains the diploma he shall present it as soon as possible to the board of directors of his association, which shall give possession to the notary-elect at a public meeting and on the day fixed by the dean.

ART. 22. On the same day of taking possession the notary shall appear, after the proper permission, before the presiding judge of the audiencia in order to enter his signature, rubric, and mark in the book which shall be kept in the secretary's office of the audiencia for this purpose.

ART. 23. A personal record of each one of the notaries of the district shall be kept in the secretary's office, or in the archives of the association. The diploma of the notary shall always be annexed thereto, by means of a certified copy issued by the same.

ART. 24. Within fifteen days following the taking of possession, which is the act of incorporation into the association, the notary shall establish himself at his place of residence, and shall immediately enter on the discharge of his duties, giving notice thereof through a communication, in which he shall make known his mark, signature, and rubric to the judge of first instance of the subdistrict, to the justice of the peace of the town, and to the other authorities or officials whom he considers proper to advise.

ART. 25. All notaries may use as the official insignia of their office an oval gold medal 19 millimeters from end to end and 15 wide, with a broad thread surrounding it, containing on the obverse a closed protocol book, and surrounded by two olive branches, with the following motto around it: *Nihil prius fide;* and on the reverse the date of the notarial law of May 28, 1862. Said medal shall be worn on the left side of the chest, suspended from a white and green ribbon.

TITLE IV.

INCOMPATIBILITIES AND PROHIBITIONS OF NOTARIES.

ART. 26. Notaries can not certify outside of the notarial district to which the town of their residence corresponds.

They may practice in the town of their residence and also in all of the towns of the same district; but a notary may only go to the town of the domicile of another notary in order to certify to contracts or last wills if previously and specially called, in cases of sickness or physical disability of any of the parties which prevents them from coming to the residence of the notary called, which must appear in the instrument, under the strictest responsibility of the authenticating notary.

ART. 27. Notaries can not be surety for the contracts they certify to, nor take part in the notarial district:

1. In transactions of speculation, exchange, or profit which are not the income of their own property.

2. In the administration of any bank or discount or brokerage establishment of a commercial or industrial company or of enterprises for leasing public revenues.

3. In contracts or business in which they take part by virtue of their office.

ART. 28. In the case of the last paragraph of article 16 of the law, a notary who is obliged to leave his residence as a Deputy to the Cortes or as a provincial deputy shall, under his responsibility, make a memorandum immediately after the last original instrument of his current protocol of the day and the reason for his absence, officially advising the presiding judge of the audiencia, the judge of first instance of the district, and the dean of the notarial association of the territory.

He shall make a memorandum of his return with the same formalities.

ART. 29. Besides the provisions contained in article 16 of the law, notaries who are appointed in accordance with the same can not, for any reason whatsoever, exercise judicial powers in inferior and superior courts, no matter of what denomination and class the latter may be.

ART. 30. The relatives of a notary within the fourth civil degree of consanguinity or second of affinity can not apply for appointment as notaries of the same town, unless there are four or more notarial offices in the latter which are filled by notaries who are not relatives.

ART. 31. Notaries can not certify to incidents which occurred in public acts presided over by a competent authority without first submitting it to the same. Said authority can not make any opposition to the former discharging the duties of his office, after having complied with the aforementioned requisite.

TITLE V.

PROTOCOLS, ORIGINAL INSTRUMENTS, AND INDICES OF THE SAME.

ART. 32. Each protocol shall include the original instruments of each year, counting from January 1 to December 31, both inclusive, even if during said year the notarial office has become vacant and a new notary may have been appointed.

ART. 33. All original instruments shall bear the proper number, written in letters, by order of dates.

ART. 34. All the pages of the protocol shall be folioed with their number according to the proper order, also written in letters; besides this numeration the figures may be added.

ART. 35. All the sheets of original instruments shall be composed of full sheets of stamped paper, in accordance with the provisions in force or which may hereafter become operative.

ART. 36. On the side by which original instruments are to be bound they shall have a blank margin of 20 millimeters, besides one of 60 millimeters on each page at the left of the text, in which the notary shall make his rubric.

The edges of the paper shall not be trimmed nor cut for any reason whatsoever.

ART. 37. Notaries can not commence the drafting of any original instrument except on a new sheet, and on the face or page of the paper which contains the stamp, continuing the instrument on the sheet which is not stamped; nor may they use for the protocol anything but entire sheets, it being required that the pages of the same which remain blank be folioed, which shall be considered as margins on which to continue legal annotations of the respective instruments after the margin is filled.

ART. 38. The first page of the first sheet of each protocol shall contain the following title:

"Protocol of the public instruments corresponding to the year ———."

And after dating it in letters it shall be signed and rubricated.

Every protocol shall be closed in the same manner on the last day of each year, the following memorandum, authenticated by the notary, being placed immediately after the last instrument:

The protocol for the year ——— is closed, containing ——— public instruments and ——— folios, certified to by me, the undersigned notary of N.———, and I hereby certify to not having authenticated any others.

And he shall mark, date in letters, sign, and rubricate.

ART. 39. When the annual protocol, on account of its volume, should be bound in more than one volume, in the judgment of the notary, the first one shall be closed and the second one begun with the memoranda mentioned in the foregoing article, changed in so far as may be necessary in order to state the months included in each volume. The different volumes shall not be considered different protocols, for which reason the paging begun in the first volume shall not be interrupted and a new paging commenced in the second. It is necessary to state in the final memorandum of the last volume of each protocol, besides the number of instruments and folios of the volume, the number of instruments and folios which together form the protocol.

ART. 40. When a notarial office becomes vacant the justice of the peace of the town of the residence, accompanied by the clerk of the inferior court, shall repair to the office in order to make the following memorandum immediately after the last instrument of the current protocol, which shall be dated in letters and signed by both:

This notarial office has become vacant on account of ———, there being up to the present time in this protocol ——— authenticated public instruments and ——— folios, to which I certify. [Date and signature.]

ART. 41. Notaries shall carefully preserve in wrappers the original instruments until the protocol is bound.

The wrappers shall be of a size slightly larger than that of the stamped paper, and the sheets of the instruments must not be folded therein.

ART. 42. Within the first eight days of each month, according to article 33 of the law, the notaries shall forward to the presiding judges of the audiencias an index of the original instruments executed during the previous month, or shall certify that none have been executed.

The indices and their copies shall be made on paper stamped with the stamp of the office.

In the case mentioned in article 40 of these regulations the justice of the peace and his clerk shall make the index of the instruments authenticated and not included in the last monthly index, forwarding it to the presiding judge and leaving the copy as has been prescribed. The indices shall be drafted in accordance with the form contained at the end of these regulations.

ART. 43. In the first two months of each year the protocols must be bound, with the exception of the private ones, which are in course of formation in accordance with the law.

ART. 44. Notaries are responsible for the completeness and preservation of the protocols, either in wrappers or bound, if they become impaired on account of lack of care, and shall restore them at their own expense, besides incurring the fine or disciplinary correction to which they have made themselves liable.

If there is any reasonable cause to suspect that a crime has been committed, the institution of an action shall immediately be begun.

ART. 45. The protocol shall be bound in parchment, under the responsibility of the notary; the inside cover shall be larger than the outside one on the three sides which are not sewn, so that being folded over the edges of the protocol they may be fastened or closed over the outside cover, the edges of the sheets of the protocol being thus protected.

On the back of the same the following shall be written in large characters: "Protocol, year of ——— (whatever it may be, in figures)."

ART. 46. Notaries shall keep the protocols under lock and key in the same building in which they reside.

ART. 47. As a general rule all protocols are secret.

With regard to the protocols specially kept private, treated of in articles 34 and 35 of the law, the formalities prescribed for general protocols shall be observed in so far as applicable, complying with the provisions of the articles of the law herein mentioned.

They shall be bound at the end of the year during which the instrument bearing No. 100 was authenticated. In the meantime their wrapper shall have on the tape two bands of crossed paper fastened with a wafer at their point of crossing, and it shall be rubricated. Whenever a new original instrument or a copy of the wrappers of closed wills and codicils is to be placed in the wrapper, in accordance with the aforesaid

articles of the law, said bands shall be broken and new ones placed thereon with the proper formalities until they are bound.

The title on the volume of the latter or on the face of the wrapper, if they have not yet been bound, shall be—

For the packages referred to in article 34 of the law: "Private testamentary protocol. Year of ——— (in figures)."

For the protocols treated of in article 35 of the law: "Private protocol. Affiliations. Year of ——— (in figures)."

ART. 48. Nothing but black ink without ingredients which might corrode the paper, or cause the writing to fade, blot or disappear, shall be used for original instruments.

ART. 49. Notaries shall certify to public instruments under their own hand, first making their mark, and then signing and rubricating below the mark.

ART. 50. No notary shall make his mark or sign with a stamp.

ART. 51. Original instruments shall be drafted in accordance with article 25 of the law, a clear, pure, and precise style being used, without any phrase or word which is obscure or susceptible of ambiguity.

When it is necessary to introduce a document, paragraph, phrase, or word written in another language or dialect, its translation shall be placed immediately thereafter, or what the party understands by the foreign phrase, word, or name shall be explained.

ART. 52. The abbreviations and blank spaces treated of in article 25 of the law do not refer to initials, abbreviations, or phrases sanctioned by custom, titles of honor, expressions of courtesy, of respect, or of honored memory, nor shall the blank spaces left at the end of a line be considered such when the following one is the beginning of a paragraph; but in the latter case the blank space must be covered by a line made with the same ink as used in the drafting of the document.

ART. 63. Original instruments shall be signed in accordance with the second paragraph of article 17 of the law and in the presence of the number of witnesses prescribed by article 20 of the same; but if the parties or any one of them does not know how or can not sign, the notary shall state this fact, one of the witnesses being required to sign, writing in his own hand before the signature that he does so in person as a witness and in the name of the party or witness who does not know how or is not able to do so.

ART. 54. For the purposes of article 20 of the law, by public instruments *inter vivos* is understood all those which are executed without consideration or relation to the death of the executor.

ART. 55. One at least of the witnesses required for public instruments *inter vivos* must be able to read and write, should the parties interested not be able to do so.

If the parties interested know how to sign, it shall not be necessary for the witnesses to sign, nor that one of them should be able to do so.

When witnesses of identification are also necessary, in accordance

with article 23 of the law, one at least must be able to sign, and shall sign, and in both cases the details regarding the witnesses prescribed by article 24 of the law shall be stated.

ART. 56. The impediments treated of in article 21 of the law do not refer to witnesses of identification, when they assist in that capacity only.

ART. 57. As a general rule witnesses of identification shall not be so called except when neither the notary nor the attesting witnesses are acquainted with the parties. If the notary only is acquainted with them, the witnesses of identification shall not be necessary, the former stating this fact. If only one of the attesting witnesses is acquainted with them, one witness of identification only shall be necessary, even though he is not able to sign. The notary must be personally acquainted with all the witnesses of identification.

ART. 58. In the cases of the third paragraph of article 23 of the law in which it is impossible for a notary to certify as to being acquainted with the parties interested, and the latter can not present witnesses of identification, he shall so state it, mentioning the two documents which are presented to him in proof of the name, status (whether married or single), residence and origin, besides giving the reason for the serious or extraordinary cause referred to in the aforementioned article of the law.

ART. 59. The obstacles to being witnesses to public instruments established by articles 21 to 27 of the law refer only to the clerks or amanuenses, whether they receive a salary or not, and to servants; but not to students and alumni who are in the notarial office, provided they do not receive a salary.

ART. 60. The parties interested may object to certain persons acting as witnesses to the instrument, unless they execute it by virtue of law or a judicial mandate.

ART. 61. The presence of the witnesses is required for the reading, approval, and signature, all of which shall take place at the same time.

ART. 62. Persons who are capable of being witnesses to public instruments commit an honorable and praiseworthy act. In cases of necessity, and at the instance of a notary, the local authorities must administratively compel one or more residents to appear as witnesses to a public instrument.

ART. 63. It shall not be necessary for a notary to state at the end of each written clause of the instrument in question that he certifies to the same, nor to the conditions or legal circumstances of the persons or things referred to; it shall be sufficient for him to state once in each public instrument that he certifies to all that is contained therein in order to have said statement include all words and real or personal stipulations and conditions contained in the instrument, in accordance with the laws.

ART. 64. The certification as to the knowledge of the profession and

residence of the parties, which a notary is required to issue as prescribed by the second paragraph of article 23 of the law, shall be sufficient that it be in accordance with the statement of the said parties.

ART. 65. A notary, when his own private obligations are involved, may also be a party to the instrument, writing before his signature *by me* and *before me* and he may in a similar manner authenticate the obligations of his relatives.

ART. 66. The placing in the protocol of all kinds of instruments and contracts prescribed by the laws is the exclusive privilege of notaries.

When, by virtue of judicial instruments, proceedings, or suits, it becomes necessary to draft an original instrument, the judge or court taking cognizance of the former shall order that it be authenticated and placed in the protocol by a notary residing in the town where the court is established, for which purpose the original decrees and any other data necessary for the compliance with the order shall be furnished him.

The selection from among the notaries filling said conditions shall be made by the persons interested if the designation is unanimous; otherwise the selection shall be made by the judge or court.

A protocol of judicial instruments shall not be kept for any reason whatsoever.

TITLE VI.

COPIES OF THE PROTOCOL AND OF CERTIFICATES AND INSTRUMENTS AUTHENTICATED BY NOTARIES.

ART. 67. By public instrument shall be understood, besides the original instrument, the copies of the same issued with the legal formalities.

ART. 68. Public instruments shall contain a precise citation of the protocol and of the number of the original instrument according to the same, of which they are a copy, and they shall be issued, marked, signed, and rubricated by the notary on stamped paper and with the other legal formalities.

ART. 69. First copies shall always be issued with a statement of their class.

Two or more copies may be issued, but each person interested or party thereto can not demand more than one of the notary.

ART. 70. At the time of the issue of any first copy the notary shall make a memorandum at the margin of the original instrument and above his signature, of the person or persons for whom said first copy is issued, the date of the issue, and the class of stamped paper on which it is drafted, besides stating all these details in the subscribing clause with which the public instrument is closed, according to article 68.

ART. 71. In addition to each one of the parties thereto, according to article 17 of the law, persons basing their claims thereon have a right

to a first copy—as, for example, a lender—in an instrument constituting a loan, although he does not execute it; a payer, although he does not issue the receipt, and other similar ones; notaries in a case not specified observing the customs and general jurisprudence.

ART. 72. The person who appears to have obtained his first copy, according to the protocol, can not obtain another one without the formalities of article 18 of the law. Whenever second copies are issued, a memorandum shall be made in the same manner as indicated for first copies in article 70; stating also in the authentication or *concordance* that it is a second copy; the number of the time it has been issued, for what person, the date of issue, on what stamped paper, and the date of the judicial mandate.

The latter shall not be necessary when the citation treated of in article 18 of the law is not required.

ART. 73. In order to issue copies in accordance with article 31 of the law, it shall be understood that the protocol is legally—

1. In charge of the notary in possession of the notarial office.

2. In charge of the notary charged with the same when it is vacant or the owner is absent or incapacitated.

3. In charge of the archivist, when archives of the notarial districts exist.

Courts shall never, either officially or at the instance of an interested party, order clerks of courts who act simply as recording clerks (Escribanos actuarios) to issue in fulfillment of judicial orders copies of original instruments, but they shall demand them of the notary who is required to issue them in accordance with the law and the preceding paragraphs. The provisions contained in the third paragraph of article 32 of the law shall be observed, with regard to the comparison or acknowledgment of these copies.

ART. 74. By a legalization is understood the certification written immediately after the instrument, dated, marked, signed, and rubricated by two notaries, certifying that the notary who authenticates uses a mark, signature, and rubric similar to those which appear, and which seem to be of his own hand, and that he was practicing on the date of the instrument, nothing to the contrary being known.

ART. 75. When, in accordance with article 30 of the law, there do not exist two notaries in the district who can legalize, the judge of first instance will legalize with his countersignature and the seal of the court.

ART. 76. Notaries who are members of the board of directors of each notarial association may, during the time they hold said position, legalize the mark, signature, and rubric of each of the notaries of the territory.

ART. 77. No notary can refuse to legalize without giving good reasons; but if he has any reason to doubt as to the authenticity of the mark and signature, he may suspend its legalization for three days, in order to dispel his doubts.

Should he not be able to do so, he can refuse to legalize, and in such case he shall immediately address a communication to the judge of first instance and to the dean of the notarial association, informing them thereof.

ART. 78. Notaries may receive in deposit the documents, bonds, and sums which private persons may desire to deposit with them, either as security for the fulfillment of contracts or for safe-keeping.

The admission of these deposits is voluntary, and the notary may impose conditions upon the depositor, which shall be stated in the receipt or document of security issued by the notary.

ART. 79. Notaries, in order to keep a record of depositions for presentation as evidence, of certificates of existence and certifications of the legality of signatures as well as of the legalizations of marks, signatures, and rubrics of notaries, shall make a memorandum in a book kept for the purpose. The memorandum shall consist of a very brief entry, sufficient to show the work done. Every entry shall be authenticated with the surname of the notary, one being made immediately after the other. The book shall be composed of stamped paper of the same class as that of the protocol, and when, on account of the volume of the former, the notary considers it proper, he shall have it bound.

A report of such memoranda or entries is not required in the monthly index.

ART. 80. All notarial memoranda made at the instance of a party and not included in the provisions of the preceding article shall be signed by the notary and by the persons interested, and if any of the latter do not know how or can not or will not sign, this fact shall be stated. These memoranda shall be made in the same manner as the original instruments in the current protocol; they shall be included in the monthly indices, and as many copies as they may request shall be issued to the persons interested, duly marked, signed, and rubricated, without stating whether they are first, second, or subsequent ones, and on the same class of paper as the depositions for presentation as evidence.

TITLE VII.

ARCHIVES OF PROTOCOLS AND OFFICIAL INSPECTIONS THEREOF.

ART. 81. Archives of protocols are general and special.

The former are the district archives established in the seat of each judicial subdistrict. The latter are the private ones of each notary.

ART. 82. No person who is not a notary shall be permitted to have archives of protocols in his possession.

ART. 83. General archives shall be made with the protocols, books, and documents of the notarial offices included in the respective territory of each district, which are more than thirty years old. The thirty latest protocols shall form the special archives of each notarial office, and every year the proper protocol shall be sent to the general archives.

The private book and protocol referred to in articles 34 and 35 of the law shall be forwarded to the general archives thirty years after the date of their commencement.

ART. 84. The general archives of each district shall be in charge of a notary whose residence is in the seat of the same district.

The appointment of the archivist of protocols shall be made by the colonial department.

ART. 85. The judge of first instance shall give possession to the notary archivist, having the books and papers of the archives turned over to him according to inventory in his presence and in that of the secretary of the court, making a memorandum, the original of which shall remain on file in the archives, and copies thereof being sent to the board of the notarial association and to the president of the audiencia.

The inventories of archives must necessarily contain a statement of all the papers of the same; and with reference to the protocols, they shall state their number, folios of each volume, notaries who authenticated them, and years they include.

ART. 86. Notary-archivists can not be suspended nor removed from office except for the reasons and in the manner prescribed for notaries.

ART. 87. All expenses incurred by reason of the organization, custody, preservation, and others relating to the archives, shall be defrayed by the notary-archivist.

ART. 88. Archivists shall receive for the safe keeping and search for instruments and for the issue of copies, the fees fixed in the notarial schedules.

ART. 89. Notaries shall personally take to the general archives of the district to which they belong the protocol or protocols and books, which they must deposit there every year, guarding them up to the instant they personally deliver the same to the archivist.

ART. 90. Said general archives shall be subject to the inspection and surveillance of the boards of directors of the notarial associations and of the presiding judges of audiencias.

Either one of them may order, when they consider it advisable, ordinary or extraordinary inspections of certain archives, making the proper memoranda.

ART. 91. Judges of first instance as delegates of the presiding judge of the audiencia shall make an annual inspection of the archives of protocols of their district, making a memorandum of what they may observe with regard to the condition of the protocols and of the building in which they are kept, as well as of the care of the same collections of instruments, forwarding a copy of the memorandum to the presiding judge of the audiencia of the territory.

In towns where there is more than one judge of first instance the senior in service shall be delegated.

ART. 92. Boards of directors and presiding judges of audiencias may

discipline notary-archivists for any errors they may commit in the discharge of their duties, which shall consist of warnings, reprimands, or fines up to 200 pesos.

ART. 93. In the case of the destruction of the whole or of a part of a protocol, besides the obligations prescribed for notaries by article 39 of the law, they must also inform the board of directors of the association.

If the notary interested can not comply with the prescriptions of said article of the law and of the present one, any other notary residing in the same locality shall do so. Should there not be another one the justice of the peace shall have this obligation.

ART. 94. Besides the authorities stated in article 40 of the law to inspect protocols in ordinary or extraordinary cases, the authorities of the public treasury may order special inspections of notarial offices, only with regard to the legal use of stamped paper; but in accordance with the said article 40 of the law, there shall be appointed for this purpose the *fiscales* of the treasury and the *promotores* of the inferior courts, who are the legal representatives of the treasury.

These may commission to the inspection of certain notarial offices, justices of the peace of the town where the protocol to be inspected is situated.

ART. 95. The boards of directors of the associations may also delegate one or more of the members of the association to inspect certain notarial offices, in order to remedy the defects or omissions capable of correction in the manner of writing and keeping the instruments and protocols and to assure themselves of the exact and uniform compliance with notarial obligations in the entire territory, the board imposing the penalties considered proper and which are in their power.

TITLE VIII.

ORGANIZATION AND DISCIPLINE OF NOTARIES AND ADMINISTRATIVE CORRECTIONS.

ART. 96. Notarial associations shall be established in every town where there is an audiencia, which shall be called "Notarial association of the territory of ———."

ART. 97. The notarial association shall be managed by boards of directors composed of—

One president, with the title of dean of the association.

Two censors.

One treasurer.

One secretary.

ART. 98. Only notaries who reside in the seat of the territory may be elected to the foregoing offices, and they shall be elected by the majority of the votes of all the association notaries.

Notaries who do not reside in the seat may forward their votes in a sealed envelope.

ART. 99. The office of member of the board shall be triennial, obligatory, honorary, and without pay.

The election shall take place from December 15 to 24 if it be a general one, and the persons elected shall take possession from the following 1st of January. If it be for a specified position it shall take place within thirty days after the vacancy has occurred and for the time of the triennial remaining until the entire renewal of the board.

ART. 100. The boards of directors shall elect a notary in each district, who shall be called delegate, and another one to take his place, who shall be called subdelegate. Through these persons the board of directors shall maintain the most rigorous discipline among all the notaries; they shall uniform the practice and shall do all that is necessary for the best public service and the decorum of the class. The office of a delegate of a district shall be for three years, but the board may reelect the same notary.

This position is also honorary, gratuitous, and obligatory, with the exception of a case of reelection.

ART. 101. Notaries in so far as their disciplinary organization is concerned, are under the jurisdiction of the judge of first instance of the subdistrict, of the board of directors of their association, of the chamber of administration of the territorial audiencia, and of the colonial department.

ART. 102. Besides the powers granted boards of directors of notarial associations by article 43 of the law, they shall have the following:

1. To communicate officially with presiding judges of audiencias and with the colonial department.

2. To communicate in the same manner with boards of other associations, in order to prepare in an identical manner all data and information which may be requested by the department or the presiding judges and *fiscales* of audiencias for any reason whatsoever.

3. To prevent or compose differences which may arise between notaries by reason of their office.

4. To prepare the annual budget of the administrative expenses of the association, levying on each one of the members thereof for the amount he is to contribute thereto, and which shall not exceed in one or more annual assessments the amounts fixed for the purpose at a general meeting.

5. To collect and disburse the funds of the association, submitting an annual report and justified statement to the presiding judge of the audiencia.

The boards shall also be under the obligation to form and keep a personal record of each notary, with a memorandum regarding their vicissitudes, merits, and services, as well as to keep all of their decisions in a paged book authenticated by the dean and the secretary.

The other attributes of boards and of each member thereof, not stated in the law nor in these regulations, shall be included in the private rules and regulations of each association.

ART. 103. Judges of first instance, at the suggestion of the boards of directors of associations, shall impose the disciplinary corrections which must be applied to notaries of their district, at the instance of the *promotor fiscal* or officially. There shall be no other remedy against their decision except an appeal to the chamber of administration of the audiencia.

ART. 104. The chambers of administration of audiencias may proceed against the boards of directors of associations, at the instance of the *fiscal* or officially, imposing on them fines not to exceed 200 pesos and the other correctional penalties established by the law. From the decision of the chambers of administration the boards of associations may appeal to the colonial department, which may annul or reduce the correction imposed, but never increase it.

ART. 105. From the decision of the board of directors, by virtue of article 43 of the law, an appeal lies to the chamber of administration of audiencias.

ART. 106. The appeals treated of in the preceding articles, with regard to the imposition of fines, shall not be admitted if the payment of the same is not previously proven.

ART. 107. As a coercive measure, the colonial department may also impose fines not to exceed 200 pesos on boards of directors of associations and on notaries.

ART. 108. The cash fund of the associations in charge of the treasurer shall be composed of—

1. The amount collected from notaries.

2. The part of the schedule fees to which the notaries, at a general meeting of the association, agree by an absolute majority, with the previous approval of the Government.

ART. 109. Notarial associations may hold general meetings in the seat of the territory in order to discuss only subjects of interest to the class or practice of the profession.

A general meeting can not be called except by the presiding judge of the audiencia, at the instance of the respective board of directors of each association.

The presiding judge of the audiencia shall preside over the general meeting, unless he appoints, as he may do, a person authorized to preside.

The sessions of the general meeting can not last more than eight days.

At the general meetings the notaries of the territory may assist personally and vote, when they are not the only ones in their place of residence, and those of the residence of several notarial offices, provided they leave therein some notaries to attend to the public service.

Notaries who do not take part in the general meeting may send their vote in writing and sealed, or delegate their powers to any of those who do assist.

TITLE IX.

TRANSFERS, EXCHANGES, LEAVES OF ABSENCE, RESIGNATIONS, SUBSTITUTIONS, AND DISQUALIFICATIONS OF NOTARIES AND CLASSIFICATION OF NOTARIAL OFFICES.

ART. 110. Notaries may request their transfer to another notarial office in accordance with the prescriptions of the law and these regulations regarding the filling of notarial offices by competition for promotion.

ART. 111. Notaries may be transferred to a notarial office of the same grade as the one they are in possession of within or without the territory of the same association, for just cause, duly proven in administrative proceedings at which the interested person, the board of the notarial association, and the chamber of administration of the audiencia shall be heard.

As just cause shall be considered any serious offense committed in the discharge of his duties or any other which lowers the notary in the opinion of the public. The person who is to be transferred in accordance with this article may only fill one of the vacancies corresponding to the transfer series.

ART. 112. Only in cases of public benefit, in the judgment of the Government, after receiving reports from the chambers of administration and the boards of directors of the associations, and taking into consideration the age, health, and other circumstances of the persons interested, may exchanges between notaries be consented to, provided they have notarial offices of the same grade and that there is not more than ten years' difference in the age of the persons effecting the exchange.

ART. 113. Notaries may absent themselves from their offices when there is no urgent need for their services—for five days those residing in towns where they are the only ones; for ten days where there are two, and for fifteen days where there are more. Whenever they make use of this privilege they shall advise the dean of the association, or the delegate or subdelegate thereof, according to the cases.

If any of them or the judicial or administrative authorities notice an abuse of this authority on the part of any notary, they shall inform the board of directors of the association, which shall impose the proper disciplinary penalty, reporting it to the presiding judge of the audiencia.

With the exception of the case mentioned in the preceding paragraph, notaries can not absent themselves without previous permission, which shall be granted for sufficient reasons by the board of the notarial association for a period not to exceed two months, and by the presiding judge of the audiencia for a period exceeding two months and

not more than four, after receiving a report from the board. In the first case the request for the leave of absence shall be addressed through the delegate or dean to the board, and in the second through the latter to the presiding judge. The Government only may grant leaves of absence for more than four months, after receiving a report from the board and the presiding judge.

Every notary who enjoys a leave of absence shall be under the obligation to inform the dean of his return to take charge of his notarial office on the same day he does so. The boards of the associations shall see that no notary exceeds the leave of absence granted him, and should any exceed said period they shall advise the presiding judge of the audiencia thereof.

ART. 114. Notaries may resign from their office, but not in favor of a determined person. The powers and obligations of notaries who resign shall not cease until the resignation has been accepted.

ART. 115. When for any reason whatsoever there does not exist the legal substitute for each notarial office, and the notary is temporarily incapacitated, he may appoint another notary of the same town to take his place. Should there not be another one, the one of the nearest residence shall substitute him.

ART. 116. It is understood that the substitution treated of in article 6 of the law is temporary; therefore the transfer of protocols to the notarial office of the substitute is not obligatory; but the latter shall take charge of the key of the office in which they are kept, and adopt any other measures he may consider prudent for the security of the same. The documents he authenticates shall be placed in the protocol of the notarial office of the person substituted. The former shall state the reasons, and shall credit to the latter half of the fees collected during the substitution.

ART. 117. When a notary is permanently incapacitated, being over 60 years of age and having filled the office for a period of twenty years, he may request that his office be declared vacant, the person taking the same being under the obligation to pay the former an annuity during his lifetime, the amount of which shall be fixed in each case, this incumbrance being mentioned in the announcement which may be made to fill the vacancy.

ART. 118. If the notary becomes incapacitated for any of the reasons mentioned in article 46 of the law, he may make use of the privilege granted him in the preceding one, notwithstanding that he has not reached the age nor served the years prescribed; but in such case he shall lose the right to the pension treated of in the said article 46 of the law.

ART. 119. The boards of directors of the associations may grant from the funds of the same the concession of a fixed sum, and for once only, to a notary who has made efforts to save his archives or those of another notary from flood, fire, or other force majeure, even though he has not been incapacitated nor suffered any personal bodily injury.

ART. 120. For all legal effects notarial offices shall be classified in accordance with the following order of grades:

1. Of the seat of an association.
2. Of the seat of a district.
3. Of any other point.

ART. 121. Notarial associations shall have the special regulations for their local management which may be adopted at a general meeting; but the draft of their regulations shall be submitted to the approval of the Government.

They may in the same manner create mutual benefit associations or such associations as they may consider advisable.

TEMPORARY PROVISIONS.

1. All individuals who, under any title and with the proper diploma, issue extrajudicial authentications shall be called notaries. They shall continue to officiate, but with strict subjection to the requisites and duties or limitations fixed by their respective diplomas.

2. All notaries who at the time of the publication of these regulations are discharging duties not incompatible up to the present time with the notarial profession, may continue to do so, provided they are not required thereby to reside outside of the locality of their notarial residence indicated in the diploma.

3. The Government shall at once issue the proper rules in harmony with temporary provisions Nos. 3 and 4 of the law of May 28, 1862, and article 5 of the law of June 18, 1870, in order that the alienable public offices be classified, the rights of the holders thereof declared, and that the proper indemnity be paid them by reason of the reincorporation of said offices into the State.

4. The Government, after the proper reports, shall equitably decide in all special cases the questions and consultations submitted with regard to the application of the reform of notarial offices in the personal part as well as in all that relates to the institution of public certification.

5. All provisions and practices conflicting with the execution of these regulations are hereby repealed.

Madrid, October 29, 1873.

SANTIAGO SOLER,
Secretary for the Colonies.

APPENDIX I.

Royal decree of May 16, 1878, reducing the fees fixed by the Notarial Schedules approved for Cuba and Puerto Rico on November 8, 1874, by 20 per cent.

SIR: By a decree dated November 8, 1874, there were approved, with a provisional character, the notarial schedules which are at present in force in Cuba and Puerto Rico, it being ordered at the same time by the eighth of the general provisions of the aforesaid decree that the notarial boards of the seats of audiencias, taking into careful consideration the requirements, number of transactions, income of the notarial offices, and other similar circumstances in each territory, draft a new project, which, after a report from the bars, and after hearing the opinion of the proper court sitting in full, was to be forwarded to this department for the proper effects.

Everything has been carried out in the manner prescribed, and the proceedings terminated with the report issued by the colonial department of the council of state.

Taking into consideration that the opinions of the different bureaus and corporations consulted are not in harmony, the undersigned secretary judges that the dissatisfaction occasioned in the colonies by the notarial schedule in force is evident.

The deputies for Puerto Rico, urged by their constituents, have several times indicated their desire and even the urgent necessity to reduce the rates fixed in said schedules, and there is no doubt as to the advisability of radically modifying the schedules in force at the present time, substituting for them other more equitable ones and changing the general idea of their plan and system.

In the meantime, after a fuller examination of the question and in view of the data which constitute the proceedings instituted by the department of grace and justice for a similar reform in the Peninsula, the time has arrived to lay before Your Majesty the proper, definite determination, the justice and advisability of modifying the provisional regulations in force appearing evident, by reducing all the sections of the schedule of November 8, 1874, by 20 per cent.

The annexed project includes two other amendments which refer to the general provisions of said schedule. By the first one private persons who consider themselves injured may impugn the accounts of notaries before justices of the peace, with an appeal to the judge of first instance and without any subsequent remedy, instead of to the audiencia of the territory, by which the exercise of their right is facilitated to the persons interested, saving them considerable expense. The second one is prompted by the necessity to harmonize Nos. 4 and 5 of the schedule with the provisions which the mortgage law, as applied to Puerto Rico, and which by a decree of this date is extended to the island of Cuba, established as a minimum rate for the purposes of records in registries of property.

By virtue of the reasons expressed, the undersigned has the honor to submit for the approval of Your Majesty, the following draft of a decree.

Madrid, May 16, 1878.

Sir, at the royal feet of Your Majesty,

SALVADOR DE ALBACETE.

ROYAL DECREE.

By virtue of the suggestion of the secretary of the colonies, and in accordance with the council of secretaries, and hearing the colonial department of the council of state,

I hereby decree the following:

ARTICLE 1. All sections of the notarial schedules provisionally approved for the islands of Cuba and Puerto Rico by a decree of November 8, 1874, are hereby reduced by 20 per cent.

ART. 2. The opposition which, in accordance with general provision No. 4, may be brought by the persons interested against the accounts of notaries, shall be instituted before a justice of the peace, with an appeal, if proper, to the judge of first instance of the subdistrict in which the notarial office in question is situated, without further remedy, the liability of the judge rendering the decision being always reserved.

ART. 3. Numbers 4 and 5 of the schedule are modified with regard to the value of articles which are the subject of contracts, according to the prescriptions of general provision number 6 and in accordance with the provisions of the mortgage laws.

ART. 4. The provisions of this decree shall go into operation on the 1st of next July, and after publication of the annexed modified schedule in the *Gacetas* de Cuba and Puerto Rico.

Issued at the Palace on May 16, 1879.

ALFONSO.

SALVADOR DE ALBACETE,
Secretary for the Colonies.

Notarial schedules which shall be provisionally in force in the islands of Cuba and Puerto Rico by virtue of the preceding decree.

No.	ORIGINAL INSTRUMENTS.
1	For each sheet of an original instrument in all kinds of contracts, wills, nuncupative codicils, and other instruments not expressly excepted in this schedule, 7.50 pesetas.
2	For the examination of prior data and for that of documents which must be attached to the registry or included in its copies, or which are necessary to prove the identity of the contractors, for each sheet, 0.24 céntimos.
3	If the documents mentioned in the preceding number have to be renewed on the proper stamped paper, for each memorandum made on the new copy, 1 peseta.
4	For original instruments or recordable contracts involving articles or sums not exceeding 1,500 pesetas, 1.60 per 100. In those which involve amounts of more than 1,500 pesetas to 2,500, 2.20 per 100. For fees for the copy of said instrument which are to be taken to registers of property, half of the fees fixed for the respective original instrument shall be charged.
5	For original instruments of all kinds of contracts involving articles or sums above 2,500 pesetas to 6,250, fees shall be charged in accordance with No. 1 of this schedule. (Those of No. 1.)
6	In contracts with a right of repurchase, exchange, award in payment of debts, impositions of annuities (censos), and others involving the real delivery of cash, or its equivalent in other obligations, either at once, acknowledged or deferred, provided they are not expressly excepted in this schedule, fees shall be collected in accordance with the following paragraphs: For original instruments of contracts the value or amount of which exceeds 6,250 pesetas and is not more than 62,500, 0.80 céntimos per 100. For those involving more than 62,500 pesetas up to 156,250 there shall be charged, besides the rate fixed in the foregoing paragraph, 0.40 céntimos per 100 for the excess. For those involving an amount greater than 156,250 pesetas up to 312,500, besides the amount fixed in the preceding paragraphs, there shall be charged 0 20 centimos per 100 for the excess. For those involving more than 312,500 pesetas to 625,000, besides the rates fixed in the preceding paragraphs, there shall be charged 0.10 céntimos per 100 for the excess.

Notarial schedules which shall be provisionally in force, etc.—Continued.

No.	ORIGINAL INSTRUMENTS.
	Contracts involving more than 625,000 pesetas shall pay fees as if they did not exceed said amount.
	In these contracts notaries can not collect the fees referred to in number 2 of this schedule.
	The instruments of the declaration of the capital the husband brings in marriage, receipts; lets and sublets, and the articles of partnerships and corporations shall be considered as included in number 1 of this schedule. (Those of No. 1.)
7	In contracts of redemption of annuities (censos), repurchases, loans with a mortgage, pledge, or bond, or without these guarantees, cessions of credits for a consideration, dowries, portions, articles of marriage, with a delivery and gifts *propter nuptias*, three-fourths of the proportionate fees which are fixed in the foregoing number shall be changed.
8	For the application of the scale referred to, the principal involved in the contract shall serve as a regulating figure in the imposition of annuities (censos), obligations, bonds, and constitution of mortgages.
	In sales and awards in payment of debts the amount thereof, minus the annuity charges and others which are not purely mortgage charges.
	In the redemption of annuities (censos) and cession of credits, the principal for which the latter are created and the former redeemed.
	And in exchanges, the estate having the highest value.
9	For instruments of public services for the State the following fees shall be charged:
	In contracts up to 62,500 pesetas, 50 pesetas.
	When they exceed said sum up to 625,000 pesetas, there shall also be collected 0.50 céntimos for every 625 pesetas in excess.
	From 625,000 pesetas and over, nothing shall be collected for the excess.
10	In bills of sale of property and rights of the State and those of the redemption of annuities (censos) there shall for the present be charged one-half of the proportionate fees, according to the rules prescribed in the foregoing number.
11	When the instruments or contracts are executed outside the office of the notary within the town of his residence, besides the fees corresponding to the respective instrument, he shall charge the following ones, according to the classes:
	In the seat of an audiencia, 10 pesetas.
	In the seats of inferior courts, 7.50 pesetas.
	In other localities, 5 pesetas.
	At night the double shall be charged.
	The case is excepted where the executor is materially incapacitated to execute the instrument in the office of the notary.
	If the latter is forced to leave the town of his residence at the request of an interested party he shall in all cases, without exception, besides the fees due for the instrument or contract he is to authenticate, charge the following:
	In seats of audiencias, 50 pesetas per day.
	In seats of inferior courts, 30 pesetas.
	In other towns, 20 pesetas.
12	For sealed wills and codicils, including the proceedings of opening, 24 pesetas.
	If the sealed will or codicil is deposited with the notary he shall charge 40 pesetas more.
13	Declaration of poverty and copy thereof, including its drafting, when it takes place outside of the office of the notary on account of material incapacity of the person interested, 10 pesetas.
14	For general powers for suit, 10 pesetas.
15	Memoranda of withdrawals, cancellations, extinction of obligations, and other similar ones which must be made at the margin of the original instrument, 2 pesetas.
	COPIES.
16	For each sheet of first, second, or subsequent copies of original instruments issued within the year of their execution, 2 pesetas.
	If they are of other years, he shall charge for each year he is requested to examine 0.25 céntimos extra.
	For the care and preservation for each year of age, 0.25 céntimos.
17	Marginal notes stating that copies have been issued, 1 peseta.
	CERTIFICATIONS AND OTHER NOTARIAL WORK.
18	For each sheet of a certificate relating to any class of documents exhibited for this purpose, 4 pesetas.
19	For each sheet of insertions or literal certificates, 2 pesetas.
20	If the documents exhibited are of the sixteenth and seventeenth centuries, there shall be charged for each sheet of literal copies 3 pesetas.
	For each sheet in abstract, 6 pesetas.
	When they refer to dates prior to the sixteenth century, for each sheet of a literal copy 10 pesetas.
	For each sheet of copies in abstract, 20 pesetas.
21	When a notary is requested to certify to anything outside of his office, he shall earn for each hour engaged:
	In seats of audiencias, 15 pesetas.
	In seats of subdistricts, 10 pesetas.
	In other towns, 5 pesetas.
22	For consultations and opinions regarding professional matters, for each hour:
	In the seat of an audiencia, 8 pesetas.
	In other seats of subdistricts, 6 pesetas.
	In other towns, 4 pesetas.
23	For the authentication of documents, 7.50 pesetas, which notaries shall not collect, being represented by the stamp of the association which must be affixed in accordance with the provisions of the regulations for the execution of the notarial decree-law.

Notarial schedules which shall be provisionally in force, etc.—Continued.

No.	CERTIFICATIONS AND OTHER NOTARIAL WORK.
	No fees shall be charged for the memoranda required by said authentications or by depositions issued for presentation as evidence.
24	For extrajudicial auctions in which notaries take part at the instance of an interested person, they shall charge for each hour engaged: In seats of audiencias, 15 pesetas. In the other seats of the subdistrict, 10 pesetas. In other towns, 5 pesetas. The memoranda to be made of said auctions shall be gratis.
25	Placing in the protocol judicial records of inventories, partitions and awards of property, for each sheet, 0.31¼.
26	When the placing in the protocol is the result of judicial orders, he shall collect for fees for the latter 5 pesetas.
27	Memorandum of protest of a note or draft with the copy thereof and the proper one according to the commercial provisions, 15 pesetas.
28	Work to be done in order to indicate the document protested, 5 pesetas. To receive payment before sunset the day of the protest, deliver the draft and cancel said protest, the notary shall collect for the first hour engaged 13 pesetas. For each successive one, 10 pesetas.
29	Certificates as to existence, 5 pesetas.
30	Orders for notifications and summons, communications and notices to clerks, and similar work, 4 pesetas.
	ARCHIVES.
31	Literal copies of instruments and other instruments contained in protocols and filed in the general archives or special ones of the notarial offices, when the date of the document is subsequent to the seventeenth century, there shall be charged for each sheet 2 pesetas. When the copy is issued in abstract there shall be charged for each sheet 4 pesetas. If the documents referred to are previous to the seventeenth century, the provisions contained in No. 20 of this schedule shall be observed. (Those of No. 20.) There shall further be charged for the search for each year that it is requested to examine 0.25 céntimos. Per year when the protocols relate to a year prior to the present century, 2 pesetas. Charges for preservation and custody, for each year of age, 0.25 céntimos.
32	If any memorandum is to be made in an archived protocol, there shall be charged, besides the proper fees, according to the foregoing number, 2 50 céntimos.
33	For certified copies of public instruments or documents of the protocol, issued by virtue of a judicial mandate, there shall be charged, besides the fees for search and preservation, for each sheet, those fixed in Nos. 16 and 17. (Those of Nos. 16 and 17.)
34	For comparing copies or certified copies, by virtue of judicial mandates, when it is done in the office of the archives, per hour, 7.50 pesetas.

GENERAL PROVISIONS.

1. The price of the stamped paper is not included in this schedule.

2. The notary archivists shall issue, without charging any fees, and on official stamped paper of the office, or on that of poor persons, according to the cases, and without prejudice to renewing them at the proper time, certified copies and copies of instruments which they must issue at the instance of offices of the State, or at that of persons declared too poor to litigate, it being necessary in the latter case, when proper, that a judicial mandate be issued.

3. Notaries, in making up the account of their fees, shall in every case cite the numbers of the schedule applied.

4. The persons interested may impugn the accounts of notaries.

The oppositions shall be instituted before the proper justice of the peace.

The justice shall decide as he may deem proper, after authority from the notary; and any of the parties interested may appeal from the decision he may render to the judge of first instance of the subdistrict in which the notarial office in question is situated, who, after the same formalities, shall decide without further recourse.

In order to decide the opposition there shall be taken into consideration that the drafting of the instrument must be in accordance with the prescriptions of the regulations for the execution of the notarial law, and the number of 20 lines on the page containing the stamp and

24 on the other ones shall be considered the average figure for sheets in the registries as well as in the copies and depositions.

5. When a notary charges too much by way of fees, he shall pay, besides the amount he is ordered to return, and provided the judge considers it proper, the same amount again by way of fine, in the proper stamped paper, and in all cases, the expenses caused by said opposition.

6. The application of No. 4 of this schedule shall be understood as suspended until the mortgage law is put into operation, and as a consequence thereof the registry of property.

7. The present schedules have a temporary character only.

8. Without prejudice to the provisions contained in this schedule, private parties are at liberty to stipulate with notaries regarding the amount of fees, provided they are always less than the amounts fixed in the same.

9. All previous provisions relating to notarial fees are hereby repealed.

Madrid, May 16, 1879.

Approved by His Majesty.

ALBACETE.

APPENDIX II.

Royal order of January, 18, 1885, extending to the Islands of Cuba and Puerto Rico article 76 of the General Notarial Regulations of November 9, 1874, in force in the Peninsula.

YOUR EXCELLENCY: In view of the resolution of the board of directors of the notarial association of Habana, regarding the request of the notaries of Matanzas asking that a series be established for drawing up protocols when the designation of the notaries depends upon the judge or other authorities, in the terms prescribed by article 76 of the general notarial regulations of November 9, 1874, in force in the Peninsula;

In view of the favorable reports of the chamber of administration of the audiencia of Habana, and of the general administration of grace and justice of this department;

Considering that it is just that the distribution of drafting protocols, which are included in the case aforementioned, be made with the greatest equality possible, in order that notaries may all equally enjoy the benefits which may arise therefrom;

His Majesty the King (whom God preserve) has considered it proper to order that the said article 76 of the General Notarial Regulations of November 9, 1874, be extended to the islands of Cuba and Puerto Rico, and which reads as follows:

The placing in protocols of all kinds of acts and contracts prescribed by law corresponds exclusively to notaries.

When by virtue of acts, proceedings, or judicial suits it is necessary to draft an original instrument, the judge or court taking cognizance of the former shall order that it be drafted, authenticated, and filed in the protocol by the licensed notary residing in the town where the court is established, for which purpose the original decisions, certified copies, and data necessary for the compliance with the order shall be furnished him. If the data forwarded is not sufficient the notary may request of the parties interested, or of the judge or court directly, the ones which are lacking to complete the documentation.

The selection of the notaries who have said qualification belongs in the first place to the parties interested; if the designation is not unanimous, there being no harmony in the selection, the judge or court shall appoint the notary whose turn it is, for which purpose he shall transmit the proper communication to the delegate or subdelegate of the notarial district or to the dean of the association, if it should be in the seat of the latter, in order that they may appoint him, and who shall keep the proper book for the purpose. The appointment according to series or by the designation of the parties interested shall appear precisely in the decrees and in the instrument.

When the recording clerk is also a notary, said series may be omitted.

Which I communicate to Your Excellency by royal order for your information and subsequent effects.

May God preserve Your Excellency many years.

Madrid, January 18, 1885.

TEJADA.

To the Director-General of Grace and Justice of this Department.

APPENDIX III.

Decree of February 25, 1874, ordering that the owners of all classes of alienated public offices authorized to certify, in the territory of the islands of Cuba and Puerto Rico, present, before October 1, 1874, in the secretaries' offices of the respective audiencias, the documents referring to the ownership of the same, and prescribing rules for the classification and declaration of rights.

The organization of notarial offices in the islands of Cuba and Puerto Rico having been radically modified by the law of October 29, 1873, it was just and necessary to fix the bases which should govern the institution of the proceedings for indemnification for the alienated public offices authorized to certify which, by virtue of a final precept, must unavoidably be reincorporated into the State.

There is no doubt that the decree of the same date, published in the *Gaceta* of the 5th of the following November, filled this requirement, and with an activity worthy of applause; but, taking into consideration the system in contempt of law in force in the provinces of Cuba and Puerto Rico, and which determined all that related to alienated offices, and the undersigned secretary being of the opinion, on the other hand, that it would not be useless to the interests of the State to demand any data which might conduce to the indispensable clearness in the reigning chaos, he considers it advisable not only to somewhat enlarge the legal requirements of the said decree, but also to give greater scope to its provisions, in order to avoid by this means that the action of the chambers of administration of the respective audiencias, ceding, perhaps, to a conciseness which does not look very far into the future, be one day paralyzed, either by the lack of concrete legislation to which to adhere, or the insufficiency of the ideas, or of the lack of sufficient authority and powers to demand the documents which might be required for an elucidation of the numerous doubts which will surely arise.

Therefore, on account of the privileges which up to the present time the ownership of alienated offices carried with it in Cuba and Puerto Rico, acknowledging the confusion which with marked insistence used to arise in the discrimination and exercise of determined functions, and in view also of the complication involved in the different measures which were issued on the subject and which were in constant conflict with the neglect of an exact fulfillment, the undersigned secretary does not consider as sufficient for a good administrative management and for the necessary dignity of the law the presentation of only the documents prescribed by article 2 of the decree cited, of October 29, 1873, but, on the contrary, he firmly believes that all of those should be demanded which, in order to avoid doubts, tend honestly and loyally to a complete justification of the law of ownership and of the nature, character, and existence of alienated offices.

And if these are the ideas of the secretary in a matter which, up to the present time, involved old and special proceedings and privileges ordinarily but little known; if, in the march of modern progress, he

directs his efforts to energetically avoid the transgression of laws and the usurpation of rights; if, finally, he must not forget that so delicate a question may directly affect the brilliancy and splendor which it has been decided to give notarial offices in the colonial provinces, it is evident that he can not accept the final periods of time prescribed by article 3 of said decree in ordering that chambers of administration of audiencias shall definitely decide proceedings for indemnification within the period of three months, and by this department within a month, which can not be extended, computed from the date on which the papers in the case were received by the same.

The contents of this provision are not only in conflict with the unforeseen requirements which are constantly arising and also against the wishes of the undersigned secretary, but, speaking logically, are almost impossible. To demonstrate this fact it is sufficient to remember the considerable number of proceedings which will have to be instituted for the purpose, the delicacy of their examination, the errors capable of correction which they may contain, the new data which may be demanded, and the necessity of hearing, on more than one occasion, the honored opinion of the council of state or of any of its departments.

And if to this may be added, from a practical standpoint, that there are in the Peninsula suits which, in accordance with the notarial law of 1862, have not as yet, for good reasons, arrived at a final settlement, they will evidently demonstrate the uselessness of further efforts on the part of the undersigned to still more justify his opinion in this matter, which has been thoroughly considered.

Based on these remarks, therefore, the undersigned secretary has the honor to submit to the approval of the council of secretaries the following draft of a decree.

Madrid, February 25, 1874.

VICTOR BALAGUER,
Colonial Secretary.

DECREE.

The Government of the Republic, at a meeting of the council of secretaries and at the instance of the colonial secretary, decreed the following:

ARTICLE 1. The owners of all kinds of alienated public offices authorized to certify in the territory of the islands of Cuba and Puerto Rico shall present, before October 1, 1874, in the secretaries' offices of the proper audiencias, the documents referring to the ownership of the same, for their proper classification and the declaration of rights.

ART. 2. The documents or instruments the presentation of which is indispensable, are the last one of the acquisition of ownership in favor of the actual possessor, the one of the previous owner, those which prove the payment of the proper fees and taxes, as well as the existence or freedom from incumbrances, and any others which tend to justify the validity of the offices; all without prejudice to the ones which the chambers of administration may consider it useful or necessary to demand at any time, and according to the cases, in order to duly justify the right of ownership in an incontrovertible manner, and the nature, character, and legal assistance of the former.

The originals of these documents or compared certified copies may be presented.

ART. 3. In view of the documents presented and the other ones it may be considered advisable to demand, the chambers of administra-

tion of audiencias shall make the proper classification of the offices and of the rights of the owners of the same and shall forward the proceedings to the colonial department for a definite decision and a declaration of the right to indemnification.

ART. 4. All alienated public offices which at the time of the putting into operation of the notarial law in Cuba and Puerto Rico are vacant, shall be at once considered as having reverted to the State after indemnification, as well as those which become vacant in the future through the death or cessation of the persons who actually discharge the functions derived from the original titles or certificates of ownership.

ART. 5. The amount of the indemnification shall be satisfied when the material reincorporation into the State is effected—that is, when the vacancy is at the free disposition of the Government; but neither one nor the other shall be effective unless the office in question has been previously classified as admissible and with right to indemnification.

ART. 6. In consequence thereof the appointments made and approved of prior to the putting into operation of the aforesaid law, and which are a matter of private right of ownership, shall have their legal effects in accordance with the prescriptions of the same, and particularly with regard to the provisions contained in the temporary ones of the said law and of the general regulations for its execution.

ART. 7. Without prejudice to what has been ordered, the chambers of administration of audiencias shall see, now and at all times, that possessors of offices for one life only prove their existence in the ordinary form by means of the proper certificates; not neglecting, as soon as the death of any of them occurs, to institute the proper proceedings and declare the extinction of the office, immediately submitting a report in writing to the colonial department for the proper approval.

ART. 8. In the same manner the chambers of administration shall take care to state with clearness and preciseness in all proceedings relating to indemnifications for alienated offices, whose owners do not personally discharge the duties thereof, who may be the appointed managers, and by virtue of what title they exercise and are to continue exercising the functions of their office until it is rendered vacant by death or legal cessation.

ART. 9. From April 1, proximo, on which date the new notarial law is to go into operation, the exercise of each and every one of the prerogatives which the ownership of alienated offices authorized to certify carried with it, is prohibited in the islands of Cuba and Puerto Rico.

ART. 10. The owners of said offices who do not make use of the privilege granted them by article 1 of this decree within the limit of time fixed therein, shall lose all right to indemnification, and the colonial department, at the instance of the respective chamber of administration, shall, at the proper time, decree its due reincorporation into the State.

ART. 11. In cases of doubt, lack of written evidence, or of acknowledged abuses, the Government shall decide, hearing the council of State or one of its departments, and leaving to the interested parties the legal remedies which they may deem it advisable to make use of.

ART. 12. The colonial secretary shall, at the proper time, demand of the Cortes the suitable credit in order to pay the indemnifications which may be legally granted.

ART. 13. It is incumbent upon the said colonial secretary to issue all rules and interpretations which may be necessary for a faithful compliance with the prescriptions of this decree.

ART. 14. The decree of October 29, 1873, published in the *Gaceta* of the 5th of the following November, is hereby repealed, in so far as it conflicts with the provisions of the present one.

Madrid, February 25, 1874.

FRANCISCO SERRANO,
President of the Executive Power of the Republic.
VICTOR BALAGUER,
Colonial Secretary.

The first one of the provisions contained in the order of the President of the Executive Power of the Republic, of December 15, 1874, and which follows, is a further explanation of the foregoing decree:

In stating in the preamble of the notarial decree-law that if the modifications it involved contained any defect time would make them evident in order to correct them at the proper time; and the general regulations for the execution of the same, delegating to the Government the duty of deciding any questions and consultations which might arise, observed great prudence, it being known that such delicate matters like alienated offices would naturally require, although without conflicting with the provisions of the law, either an interpretation of some of the provisions of the regulations or their modification or reform, and always a certain amount of discretion which, for exceptional cases and with regard to said provisions, was from the beginning indisputable.

The Government being authorized by the third temporary provision of the aforesaid regulations to immediately issue the proper rules relating to the classification of the alienated offices authorized to certify and to the declaration of rights of the owners and of the payment of the respective indemnification, said privilege was in part taken advantage of by means of the decree of February 25 of the present year, in which, notwithstanding that rules are established for the institution of the proceedings which, by virtue thereof, may arise, the lack of the amount of the indemnifications has, however, been observed; a lack which will naturally affect such proceedings by making their conclusion more difficult, and on the other hand accuses of a noncompliance with the aforesaid temporary provision in the part prescribing that the rules which may be adopted on the subject, be in harmony and not subject to provisions, also temporary, Nos. 3 and 4 of the law of May 28, 1862; provisions which are precisely the ones which concretely treat of the point in question, and without the previous declaration and clear knowledge of which it is not possible to arrive at a necessary and final decision regarding the rights involved.

Therefore, if the interpretations which lead to this point will avoid unnecessary expense on the part of the persons interested, as well as slow and undeterminate proceedings, it would be just to acknowledge that measures tending to define the rights which by reason of their origin and specialty must necessarily differ in the means, proceedings, and manner of making them effective, from the general principle established, will not be without result nor less beneficial.

And, further, if besides the alienated offices authorized to certify conferred in perpetuity; if besides that absolute ownership to which the said provisions refer, there exist also, although lamentably ignored by all legislation on the question, offices conferred for one life only, which are only to last during the lifetime of their legitimate possessors; and if the notarial decree-law for the islands of Cuba and Puerto Rico not

only respects them in the discharge of their office for this entire period, which is the only obligation of the State, but also exalts them, elevating their functions and profession to the height demanded by modern times, relieving them of the new demands of science and investing them with a prestige and security they have not heretofore had, it is evident that there is no reason for indemnification, nor that any right whatsoever has been violated.

Notwithstanding this, the colonial secretary does not wish to absolutely bar steps being taken to institute the remedies which it may be desired to make use of, nor to repulse any means for claims; but he is under the necessity, which can not be prescinded from, to avoid future confusion and artful claims, by determining how and in what manner this matter must be proceeded with and by facilitating the means of arriving at a definite decision in each and every one of such cases. And this is so logical and foresightful that the injury or damage which is supposed to have been caused apparently does not result from the proceedings, their computation, the concrete claim of the persons interested, and the justification of the alleged facts, and nothing could be decided by the colonial secretary, either with regard to the right nor to the amount of the indemnification.

Nor is the advisability of explaining the provisions of article 10 of the notarial decree-law ignored by the Government. To be a notary said article requires, among other conditions, to have pursued the studies and complied with the other requisites prescribed by the laws and regulations, or to be a lawyer. It was natural that these studies, as was done for the Peninsula, should be specified in the regulations; and notwithstanding article 5 of the same, which treats of this question, limits itself to prescribing that for the office of notary, besides the qualifications prescribed by the said article 10, it was necessary not to have any permanent physical impediment or defect for the duties thereof.

A distinguished commentator on this question, in treating of the aforesaid article 10, understands without admission of doubt that the studies required are the academical ones prescribed by law for the notarial profession; but the law in question having been written for application in the colonies, where at the time of its publication no academical degrees were required for said profession, and although it is true that in the University of Habana all notarial degrees are conferred, it is also true that said institution is governed by a special plan of studies different from that of the Peninsula, therefore, to avoid justified doubts, it is considered necessary to state that the studies referred to in article 10 of the decree-law are those which constitute the notarial profession in the University of Cuba, according to the plan of studies in force or which may in the future be adopted, but without this being an obstacle to the full right of admission of the persons who prove, in accordance with the laws of the Peninsula, that they have passed the same in the universities of the latter.

But notwithstanding this facility of means which was in justice due the loyal sons of the colonies, it is more than possible that in view of the indifference with which the creation of said profession was received in the islands, the very small number of alumni who took the degrees thereof, according to official data, and the distance which separates the territory of Puerto Rico, where said course of studies does not exist, involves at first the natural inconvenience of a lack of applicants, not only sufficient to fill the same, but also in sufficient number to arouse interest, to give character to the competitive examinations, and to facil-

itate the selection of an apt and competent personnel for the discharge of so difficult as well as noble a mission which the law intrusts to them. A competitive examination searches, no doubt, for the demonstration of the greatest number of acquirements, and if there are no competitors nor rivals over whom to triumph, it is logical to say that it will fail of its principal object and will not fulfill the purpose for which it is instituted.

Taking these facts into consideration, the colonial secretary, considering the capacity which will be required in the future on account of the importance of a notarial office, and in view of the reasons set forth, aside from other ones of equal importance, considers the amendment of the first part of article 9 of the Regulations for the Execution of the Notarial Law in those Islands of general utility in such manner that the competitive examination which is held according thereto in the seat of the association to which the notarial office corresponds, be subdivided among those provinces and the Peninsula, said examination being held without change and exactly in accordance with the series originally established, in the respective seat, in accordance with the prescriptions, and another in the Peninsula through the superior court established at Madrid.

This decision embraces also the same regulations in question, in so far as they treat of the competition for promotion series, declaring the same common to the Peninsula and to the islands of Cuba and Puerto Rico, without it thereby being possible to censure that a similar principle be applied to the remaining competitive examination series.

In view of all these considerations, the President of the Executive Power, in accordance with the suggestion of the department, and hearing the opinion of the council of state in full, has adopted the following provisions:

1. The owners of offices authorized to certify, conveyed or conferred with the clause of reversion to the State for the price of egression or other fixed sum, shall be indemnified in accordance with said clause.

Other owners of said alienated offices shall receive by way of indemnification, first, the amount of the egression and confirmation; second, the amount which appears to have been satisfied in addition.

The persons interested shall, when the proceedings are instituted, formulate the proper, clear, and concrete claim regarding the right they exercise in accordance with the foregoing provisions, duly proving in the same the exactness of the facts alleged and the case or cases applicable to the indemnification.

2. The possessors of offices for one life only do not have a right to any indemnification whatsoever.

Without prejudice to the provisions of the foregoing paragraph, if said possessors consider themselves injured in any manner, they may institute the proper proceedings for indemnification, in which they shall state their motives and reasons, the amount they claim by virtue thereof, and the proper legal justification regarding the existence of the same, and the appraised valuation.

The Government shall decide as may be proper, previously hearing the proper department of the council of State.

3. The studies referred to in article 10 of the decree-law of October 29, 1873, are understood to be the ones which constitute the notarial course in the universities of Cuba, according to the plan of studies in force or which may in the future be adopted; but without this being an obstacle to the full right of admission of the persons who are eligible, in accordance with the laws of the Peninsula, for having pursued the same in the universities thereof.

4. The competitive examination series referred to in article 9 of the regulations for the execution of the notarial law shall be subdivided, without changing the same, between the Peninsula and the Islands of Cuba and Puerto Rico, said examination being held once in the capital of the territory where the vacancy has occurred, and another time at Madrid, or what is the same thing, for the vacancies corresponding to the same series, alternately in Madrid and the seat of the respective Colonial Notarial Association.

All of which I communicate to Your Excellency by order of the President of the Executive Power, for its application, observance, and fulfillment.

Madrid, December 15, 1874.—ANTONIO ROMERO ORTÍZ.

To the Governor-General of ———.

To the Presiding Judge of the Audiencia of ———.

The royal decree of April 12, 1878, further explains at the same time the provisions contained in the foregoing decree and order, which is as follows:

ARTICLE 1. The owners of alienated public offices conferred in perpetuity in the islands of Cuba and Puerto Rico who renounce, in due form, the indemnification treated of in the decree of February 25, 1874, and the circular order of December 15 of the same year, shall have a right to presentation in person or of a third party for once only for the notarial offices which take the place of their offices in the same towns or districts, provided the nominee has the qualifications prescribed by article 10 of the law, and article 5 of the regulations of October 29, 1873.

The nominee shall not be subjected to a competitive examination, but will have to prove, in an examination held before the audiencia of the territory, that he possesses the knowledge required by article 11 of the said regulations.

ART. 2. If the owner of the office or the person nominated to fill the same does not possess the required conditions, or does not pass the examination, a new candidate may be nominated.

Finally, with regard to the owners of the abolished "Anotadurías" of mortgages of Cuba and Puerto Rico, which, under the title of "Notaries of the Indies," issued certifications, a royal decrée was issued on February 9, 1883.

It is as follows:

At the suggestion of the colonial secretary, in accordance with the opinion of the colonial, state, and grace and justice departments of the council of state—

I decree the following:

ARTICLE 1. The owners of the abolished anotadurías of mortgages in the islands of Cuba and Puerto Rico, who, under the title of notaries of the Indies, were issuing certifications with their own protocol by virtue of the law of March 3, 1873, may continue to discharge said duties after renouncing the right to indemnification granted them by the royal decrees of February 28 and June 27, 1873.

ART. 2. The owners of the offices mentioned in the foregoing article, who are only recorders (anotadores) and to whom the right to an indemnification is granted, may apply for nomination for their own benefit or for that of another person for once only for the notarial offices of the same towns or districts or for others of the same or of a lower class, which are vacant and are to be filled, in accordance with what is prescribed by article 11 of the royal decree of September 30, 1875.

The suppressed *anotadurías* which are united with another alienated office shall not be considered included in the preceding rules, as they have no right to an independent indemnification; their owners shall only be indemnified for the principal office with its annexes, in accordance with the general provisions regarding the reversion of alienated offices.

ART. 3. The person nominated, in accordance with the first paragraph of the foregoing article, shall be relieved from proving the income and from entering the notarial profession through a competitive examination; but he will have to prove that he possesses the conditions prescribed by articles 10 of the law and 5 of the regulations of October 29, 1873, and in an examination before the audiencia of the territory that he possesses the knowledge required by article 11 of the said regulations.

ART. 4. If the nominee does not possess the conditions required, or should not pass the examination, a new candidate may be nominated.

ART. 5. After a notarial office has been declared vacant, there shall be announced in the *Gacetas* of Habana and Puerto Rico that it is to be filled, in order that the owners of alienated offices who desire to make use of the right of nomination granted in the royal decree of April 12, 1878, and in article 2 of the present one, may address their written applications to the presiding judge of the proper audiencia within the period of thirty days, counted from the day following the publication of the announcement.

The applications shall be forwarded to the colonial secretary through the presiding judges of the audiencias after the classification of the applicants has been made by the chambers of administration, in accordance with the provisions of the following article:

ART. 6. When there are two or more applicants the following order of preference shall be observed:

First. The owner of an office authorized to certify, conferred in perpetuity, which is situated in the same town of the notarial office to be filled.

Second. The owner of an office as recorder (anotador) of mortgages of said town.

Third. The owner of an office of either of the two classes mentioned, situated in another town.

When there are two or more of the same class, the owner of the office having the highest value shall be preferred.

ART. 7. Should there not be an applicant who is the owner of an alienated public office who has a right thereto, in accordance with the provisions of this decree, it shall be filled according to the proper order of succession, in conformity with the prescriptions of article 8 of the notarial regulations.

Issued at the Palace on February 9, 1883.

ALFONSO.
GASPAR NÚÑEZ DE ARCE,
Secretary for the Colonies.

APPENDIX IV.

Royal decree of November 14, 1885, creating a registry for last wills and testaments.

SIR: The honorable jurists who drafted the original mortgage law, respecting the general principle that instruments not recorded should not prejudice third persons, so stated it in an absolute manner in article 23, with the object of securing the development of land credit, and even at the risk of injuring, in certain cases, the most just rights.

The difficulty of its establishment and the work entailed by its practical application were consequences of the radicalism of such a prescription, suspensions and extensions to declare it in force having taken place, and the necessity to except from said general principle the record of instruments of inheritance or legacies is acknowledged through "the impossibility to legally prove that a will which is presented as a title to secure a record is not repealed by a prior one, drafted with a clause of annullment, having been revoked by the testator;" and the modification of article 23 of the law of 1869 was founded thereon, it being complemented by the paragraph establishing that the record of property acquired by inheritance or legacy does not prejudice a third person until after five years from the date of the record have passed.

The right of persons who were really entitled to an inheritance was, by said addition, protected, but not without detriment to land credit, as during said period a record could not inspire the confidence necessary to attract capital to real estate acquired by inheritance.

This gave rise to a third paragraph being added to the same article by a law of July 17, 1877, and according to which the record of property acquired by legal heirs prejudices third persons from its date, should there be a will or not.

Such important changes and repeated vacillations in one of the fundamental bases of the law attracted the attention of the Government of Your Majesty, and the undersigned secretary, desirous of conciliating, in so far as practicable, the development of land credit with the due respect of the said rights, has considered himself able to do something toward this end, although without attempting the legal modification of our mortgage system, by creating a general registry for all last wills executed in Spanish territory, and even abroad before our consular agents.

Being established in a convenient manner, it will give persons who believe that they have a right to or are in hopes of an inheritance, a notice of said wills with regard to a certain person; it will avoid that property be recorded by virtue of titles which, although good, should not have any legal efficacy by the said will of the testator; it will lessen the probabilities which exist at the present time of declaring heirs *ab intestato* when there are heirs by will; and, finally, it will give the public who desire to invest capital in real estate acquired by inheritance more sources from which to ascertain, in so far as practicable, what is of greatest interest to it—that is, whether the contract executed with the person who appears to be the owner according to the registry will be exposed or not to its invalidation within the period of five years.

The project requires that the greatest secrecy regarding wills recorded during the lifetime of the testator be observed, but as soon as his death has been proved the registry is made public, as no prejudice can result from their being made known; the persons interested are obligated before obtaining a declaration of heirship *ab intestato* or the judicial approval of partitions made by virtue of a will, to present in the proper inferior court a certificate stating the wills which may have been recorded relating to the testator; notaries are prohibited from authenticating instruments of award or partition, if this certificate is not presented to them, and, finally, in order that the registry, the creation of which is proposed, may have its principal effect, registers are required to state the contents of the certificate in the record.

In this manner, without introducing any modification whatsoever in the civil law, without attempting to know the will of the testator, without adding formalities to those which are to-day required to validate instruments in which the disposition of property after death is ordered, and without altering the prescriptions of article 23 of the mortgage law, the undersigned secretary believes that third persons will be granted greater security, as even during the five years the effects of the record are to be suspended, they do not run the risk of being despoiled by heirs having a better right.

And this will not be the only advantage of the project, if it meets with the approval of Your Majesty. The registry once established, judges and courts will have a new source from which to ascertain the existence of last wills, with regard to the falsity of which litigation arises.

The basis and the authorized precedent of this registry are the ones which are kept with beneficial results in various provinces, due to the initiative and zeal of their notarial associations, some of which the undersigned secretary has had occasion to examine personally, this valuable experience causing him to generalize on the subject. The present reform is nothing more than the beginning of a service which at some future time will require development by legal precepts of greater scope; but it is of importance to establish it immediately in order that the benefits thereof may accrue and be fully utilized in the definite reforms to which our civil law must be subjected at a period which, depending upon the patriotism of all parties to assist in this national work, is believed to be not far distant.

Based on these considerations and after having heard the opinion of the chambers of administration of the audiencias, that of the boards of directors of the notarial associations, and that of the board of officers of the registry division, all of which agree to the usefulness of the institution, the undersigned secretary, in accordance with the council of secretaries, has the honor to submit the annexed draft of a decree for the approval of Your Majesty.

Madrid, November 14, 1885.

Sir, at the royal feet of Your Majesty,

FRANCISCO SILVELA.

ROYAL DECREE.

In conformity with the suggestion of the secretary of grace and justice, in accordance with the opinion of the council of secretaries,

I decree the following:

ARTICLE 1. From January 1, 1886, there shall be kept a general registry of wills in the general administration of civil registries and those of property and of notaries.

The private registries which shall also be kept in each one of the offices of the deans of the notarial associations of Spain and the colonies, as well as the data furnished by the consular agents abroad, shall serve as a basis for the general registry.

ART. 2. The general registry shall contain—

(*a*) Open or sealed wills, codicils, powers to bequeath, revocations, retractions of the latter, gifts *causa mortis*, declarations of poverty in which property which may be acquired in the future is disposed of, and in general all instruments relative to the expression or modification of last wills in which a notary assists, either of the Peninsula, adjacent islands, or colonies, or a parish priest at places where, according to law, right, or custom, he assists as certifier, or a consular agent abroad.

(*b*) The declarations made by judges to the effect that the instruments presented to them for this purpose are wills or the depositions of witnesses in a proper case, and of the decrees issued ordering that testamentary memorials be included in protocols.

(*c*) Final judgments which affect the validity of testaments and other acts of last will.

ART. 3. The general registry, as well as the private ones, shall be kept on sheets which contain the following printed columns: First, names and surnames of the testators; second, their character; third, residence or domicile; fourth, status (whether married or single); fifth, names and surnames of their parents; sixth, notary or official who authenticated the instrument, or the judge who made the declaration or issued the decree, and clerk who officiated; seventh, town in which it took place; eighth, date; ninth, character of the last will; tenth, remarks.

ART. 4. The general registry and the private ones of each notarial association shall be secret, under the liability of the personnel in this service in the administration and offices of deans of notarial associations.

Certificates may only be issued in accordance with the contents of the general registry in the following cases: First, when they are requested by judges or superior courts or officials for business of the service; second, when the principals themselves request them, proving their identity; third, when they are requested by any person, if he proves with an authentic document the death of the person of whom it is desired to ascertain whether any last will has been recorded or when said death is already known.

The certificates shall be issued by the chief of the bureau, countersigned by the director, on the proper stamped paper, which shall be furnished by the petitioners, who shall pay 1 peseta for each certificate as fees. These amounts shall be destined to cover the expenses of this service until, they and the income having been ascertained, either may be included in the budgets of the State.

The proper draft of all certificates issued, authenticated with the rubric of the director and surname of the clerk, shall be filed.

ART. 5. Parish priests, judges of first instance, and notaries of the Peninsula, adjacent islands, and the colonies, who in any manner whatsoever take part in the executions or declarations mentioned in article 2, shall direct a communication within the third day, computed from the date of the execution or declaration, to the dean of the respective notarial association, in which, in separate and numbered paragraphs, the data mentioned in article 3 shall be included. In case all of them can not be stated, they shall state that the ones included are the only ones they have been able to obtain.

The consular agents of Spain abroad shall forward to the general

administration the communication referred to in the preceding paragraph. The administration shall issue printed forms for the communications.

As soon as notaries forward the communication, they shall state this fact by means of a memorandum at the margin of the respective instrument, collecting 1 peseta therefor, which must be paid by the party interested. Half of the fees collected by the notaries in this manner shall be credited to the treasury of the respective notarial association, being destined, in so far as necessary, to defray the expenses caused by this new service.

ART. 6. Deans of notarial associations, immediately upon receiving the communications referred to in the preceding article, shall order that the data be entered in the private registry to be kept in the office of the dean. The private registry of each territory shall be kept according to alphabetical order of surnames, on sheets containing columns of common paper, which shall be bound annually, the manner of conducting this service being in charge of the respective boards.

The administration shall issue to the same the necessary sheets, also of common paper, so that in the proper columns there may be entered, in alphabetical order of surnames, the data contained in the communications, entire sheets being assigned to each letter of the alphabet.

ART. 7. On the 1st and 16th of every month the deans of the notarial associations of the Peninsula and Balearic Islands shall forward to the direction such sheets which are entirely filled, stating in the communication the number they forward, the number begun, and the entries contained on each one of the latter, with a statement of the letter to which they correspond.

If, on the day the transmission is to be made, there should not be any sheets which have been completely filled, corresponding to one letter, said transmission shall be deferred until the following one, on which day it shall be made, although no sheet has been filled.

The direction shall form the general registry with the sheets which are forwarded by the deans of the notarial associations and with the data furnished by the consular agents, which must also be contained on full sheets, one for each letter. There shall, moreover, be kept a strict alphabetical index to facilitate the search for entries in the general registry.

The deans of notarial associations of the Canary Islands and the colonies shall forward their sheets every month in the same manner.

Consular agents shall forward the proper communication within the same period of one month.

ART. 8. Whenever a declaration is requested that a person has died *ab intestato* or the judicial approval of partitions made by virtue of any last will, there shall be presented in the proper court of first instance a certificate of the direction stating those which appear recorded or that none made by the testator appears recorded.

The certificate shall be attached to the decrees, and, without prejudice to the judge deciding what he may deem proper, he shall observe in making the declaration of death *ab intestato* or in approving the partitions that the contents of the certificate are entered.

ART. 9. Notaries who are requested to certify to instruments of awards or partitions of property acquired by testate inheritance shall require the persons interested to present to them a certificate of the direction stating whether there appears recorded or not any other last will of the principal. The certificate shall be attached to the original instrument and shall be included in the copies which may be issued.

ART. 10. Registers of property shall briefly state in the record the property acquired by testate or intestate inheritance, the contents of the certificate of the direction, and shall suspend it for a defect capable of correction if the latter is not included in the instrument or in the decree of declaration or in the judicial approval.

ART. 11. The general division of registries and notaries shall exercise a general inspection of this service and shall administratively correct any errors which may be corrected by the officials in charge of the same.

TEMPORARY PROVISION.

The proper rules for the execution of this royal decree by the officials upon whom its fulfillment is incumbent, shall be issued by the state, grace and justice, and colonial departments.

Issued at Pardo on November 14, 1885.

ALFONSO.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

APPENDIX V.

Royal decree of March 7, 1893, modifying the notarial demarcation of the Island of Cuba.

COLONIAL DEPARTMENT.

INTRODUCTION.

MADAM: The royal decree of September 30, 1875, fixed the notarial demarcation of the Island of Cuba, establishing 66 notarial offices in the territory of the audiencia of Habana and 26 in that of the audiencia of Santiago de Cuba; that is, a total of 92 notarial offices in the entire island.

The numerous changes effected since that date in the judicial division of the island, to which the notarial demarcation should subordinate itself, and the consideration that in a few years the movement of contracts has changed, induced the general administration of grace and justice of this department to institute proceedings to change said notarial demarcation, and having requested the data required by the notarial law of October 29, 1873, the treasury and colonial departments of the council of state were consulted.

All the reports agree that the actual notarial demarcation of the island requires an immediate modification. In changing the judicial division no provision stated what notarial offices were to be under the jurisdiction of the new courts, and a large number of notarial offices have been vacant for some time on account of a lack of applicants, notwithstanding several calls and the reduction of the sureties, it being evident that the requirements of contracts have varied in a radical manner in many localities since the rather distant date of said demarcation.

The difference of opinion among the bureaus which have issued their reports are not numerous nor of importance. With regard to the territories of the Audiencias of Habana and Matanzas, the chamber of administration of the former and the Notarial Association differ only with regard to the notarial offices of Nueva Paz, La Esperanza, and Ceja de Pablo, the retention of which is suggested by the chamber and the bureau of administration of grace and justice, the association and the treasury and colonial division suggesting that it be abolished.

With regard to the notarial offices of Havana, the audiencia and the association believe that their number should be reduced to 12, while the said direction, the dean of the judges, and the treasury and colonial divisions of the council of state that a change from the actual number of 20 would not be proper, because the public will be better served by said number without detriment to the appropriate living of the notaries, taking into consideration the population and the number of instruments executed. It appears from the data collected in the proceedings that at the present time from 10,000 to 12,000 instruments are executed

in said capital per year, which makes an average of 500 to 600 instruments for each one of the 20 notaries; and comparing the population of Habana, which, according to the last census of 1887, amounted to 200,448 inhabitants, with that of the more important cities of the Peninsula, such as Barcelona, Seville, Valencia, and Madrid, it appears that 20 notaries in the capital of the island correspond to one notarial office for every 10,000 inhabitants, while Barcelona has one for every 5,700, Seville one for every 7,500, and Valencia one for every 9,400; and therefore, by fixing the number of 20 for the capital of the island, the notaries will be benefited.

It does not appear that the decrease in contracts has markedly affected Habana, an important diminution having been made in the public offices authorized to certify, when the 44 which previously existed were reduced to the 20 actual notarial offices. Statistics of fees are lacking, and, taking into consideration all that the data collected suggests, it would be most prudent not to change the actual number of 20 notarial offices in Habana and immediately abolish those of Nueva Paz, Esperanza, and Ceja de Pablo.

With relation to the territory of the audiencia of Santiago de Cuba, there is no doubt that the opinion of the direction and the proper department of the council of state should be observed, which is against the abolition of the notarial office of Bayamo, suggested by the notarial association, as there is no other one in the district of the inferior court; it is not advisable to create the notarial office suggested by the chamber of administration, in Mayarí, because, as the association states, there do not as yet exist there the elements for the appropriate living of a notary, who may perhaps establish himself when the central plantations situated on the bay of Nipe develop; it is necessary to suppress the notarial offices of El Cobre, Caney, Sagua de Tánamo, Las Tunas, Jiguaní, and Nuevitas, which lack applicants at all calls, because the emoluments of the same are not sufficient to defray the expenses of their holders; those of Morón and Ciego de Avila can be united into one, which will be sufficient to attend to the service and which will constitute a fair income for the official who may take charge thereof, and, finally, it is proper to reduce the notarial offices of Puerto Principe to four, the same number existing in Santiago de Cuba, a town of more importance and wealth.

In modifying the notarial demarcation, the undersigned secretary has deemed it proper to attach thereto the complementary provisions tending to facilitate its quicker and more efficient establishment, prescribing the rules to which the filling of notarial offices are to be subject, which will improve the public service and elevate the notarial class still more. This was done in the Peninsula at the time the royal decrees of demarcation of November 9, 1874, January 20, 1881, and June 2, 1889, were published, and it is still more convenient to follow this procedure in modifying that of the island of Cuba, on account of the existing reason to combine and harmonize the prescriptions which for said filling are contained in article 12 of the notarial law and article 8 of the regulations issued for its execution, with the provisions of the royal decrees of April 12, 1878, and February 9, 1883, which permitted owners of alienated offices authorized to certify and recorders of mortgages who renounced to the indemnification, the rights to have themselves or another person nominated, for once only, to fill the notarial offices which took the place of their offices in the same town, or to apply for the vacancies.

These provisions, however proper they were, tended to abolish and fill,

little by little, the large number of alienated offices which exist in the islands of Cuba and Puerto Rico, without burdening the public treasury; but applied according to the general interpretation which was given them, they retarded the filling of notarial offices in the manner which the notarial law established; that is, by competition for promotion, or competitive examination, whenever according to the provisions of article 7 of the last cited royal decree, only in cases when no owner of an alienated office requests the vacancy, is when they may be filled according to the proper series established by article 8 of the said law.

In consequence of this provision it has become exceedingly difficult for notaries to rise or obtain promotion in their respective category, depriving them of a hope which they may justly entertain.

It is advisable, therefore, as suggested by the treasury and colonial departments of the council of state, that without injuring nor depreciating in the least the rights of the owners of alienated offices, by reestablishing in the temporary provisions of this decree the spirit and letter of the royal decrees of April 12, 1878, and February 9, 1883, always giving preference to the owners of alienated public offices authorized to certify and to recorders (anotadores) of mortgages, during the time said offices exist in Cuba and Puerto Rico, to choose the vacant notarial offices by means of their nominees, to perfect the rules for promotion and transfers of practicing notaries, applying to the island of Cuba the third provision of article 12 of the notarial law for the Philippines, which admits the series of competitive examinations as suppletory only and when the notarial offices are not requested by said notaries, ordering that the examinations be alternately held for each vacancy, once in the islands and the other time in Madrid, in order to permit natives of the Peninsula as well as those of the islands to enter the profession.

In observance of the provisions of the royal decree of August 23, 1891, drafted by the department of grace and justice, which permitted colonial notaries in certain cases to choose vacant notarial offices of the Peninsula in competition with those who practice in the latter, the annexed decree orders that notaries of the Peninsula may also choose in the series of competition for promotion, together with those of Cuba, Puerto Rico, and the Philippines, limiting transfers to those of Cuba only. In this manner, without prejudice whatsoever to the latter, but rather granting them new guaranties for rise and promotion, the reciprocity which must exist for the filling of notarial offices between the Peninsula and the colonial provinces is retained.

The great importance which the notarial institution has acquired, demands of the persons who are to discharge the duties thereof the greatest conditions of aptitude possible—the several acquirements necessary by virtue of the diversity and variety of modern contracting. For this reason the competitive examinations are enlarged by extending the subjects they are to include, besides those required by article 11 of the regulations in force, to the studies of commercial, penal, administrative, and private international law, legislation on stamped paper, and the tax on property rights and transfers of property in harmony with the prescriptions for competitive examinations to fill notarial offices of the Peninsula and the Philippines.

It is necessary to introduce in the decree some rule for the election of the boards of directors of the notarial associations of Matanzas and Santiago de Cuba, which would be impracticable if said boards are to be composed of notaries who reside exactly in the seats thereof, as provided by article 98 of the Notarial Regulations, article 97 prescribing

that boards must be composed of 5 members, and the demarcation assigning 4 notaries only to each one of said seats. But this difficulty is not a new one in notarial legislation; the same thing occurs in the seats of associations like Albacete, Cáceres, Las Palmas, and Oviedo; and it is solved in the same manner as was decided for the Peninsula in article 15 of the royal decree of January 20, 1881, and for Puerto Rico in article 8 of the one of March 8, 1883; that is to say, authorizing the election of notaries of other residences as members of boards of directors, with certain limitations.

There having been established in the previous royal decree of notarial demarcation of Cuba, published on September 30, 1875, the rules which are to govern substitutions of notaries in cases of incapacity, absence, or sickness, and experience having proven that they were just, it appears proper to renew them now.

If the data which the notarial law in its article 3 requires to establish or modify a notarial demarcation can be procured, it is certain that said demarcation would answer better for the public service; but in the Peninsula as well as in Cuba and Puerto Rico the indispensable statistics to ascertain the number of instruments and contracts executed in each notarial office are lacking, as well as those relating to the importance of the questions they involved, the value of the stamped paper used in the protocols and in the copies and the fees collected by the notaries.

The only attempt at keeping notarial statistics are those which have been kept in the Philippines, in accordance with title 10 of the notarial regulations for those islands, and the undersigned secretary, considering the establishment of this reform very beneficial, suggests that it be included in the notarial regulations for Cuba and Puerto Rico when the time to modify the actual ones arrives, after having received the data requested of said islands, in this manner greater perfection being at some period attained.

In virtue of the remarks made, the undersigned has the honor to submit the annexed draft of a decree for the approval of Your Majesty.

Madrid, March 17, 1893.

Madam, at the royal feet of Your Majesty,

ANTONIO MAURA Y MONTANER.

ROYAL DECREE.

At the suggestion of the colonial secretary, in accordance with the council of secretaries and with the opinion of the treasury and colonial departments of the council of state, in the name of my august son the King, Don Alfonso XIII, and as Queen Regent of the realm, I decree the following:

ARTICLE 1. The notarial demarcation which is fixed by the annexed table, modified in accordance with the prescriptions of article 4 of the organic notarial regulations of October 29, 1873, shall become operative in the island of Cuba from the date of its publication in the *Gaceta* de la Habana.

ART. 2. For all legal effects notarial offices shall be divided into the following categories:

1. Of the seat of a notarial association;
2. Of the seat of a province;
3. Of the seat of a notarial district, and
4. Local notarial offices.

ART. 3. Notarial offices which are actually vacant and which do not appear in the table approved by article 1 are hereby abolished.

The other notarial offices which are not included in the new demarcation are also abolished as soon as their actual holders cease in the same for any reason whatsoever.

ART. 4. The filling of vacant notarial offices in the island of Cuba shall take place subject to the following order of series established for each category and for each one of the notarial associations in which the island is divided:

1. Transfers as rewards among notaries of the island of Cuba.
2. Competition for promotion between notaries of the Peninsula and of the islands of Cuba, Puerto Rico, and the Philippines.

The vacant notarial offices which are announced in the foregoing series which can not be filled on account of a lack of applicants or because the latter lack the proper qualifications, shall be filled by competitive examinations.

The competitive examinations shall be held once in the island of Cuba and another time in the Peninsula, the examination being held the first time in the seat of the notarial association where there is the vacancy and the second in Madrid, continuing thus alternately.

ART. 5. In the transfer series the Government may transfer notaries of Cuba at their instance and as a reward; but they can not be transferred to a notarial office of a higher class if they have not previously served four years at least in a notarial office of a lower category. No fixed period shall be required for notarial offices of the same category.

In this series notaries in a category lower by two or three degrees may apply for the vacancy, provided they have served more than eight or twelve years, respectively; but they shall only be appointed in default of those who possess the conditions prescribed in the foregoing paragraph.

ART. 6. In the series of competition for promotion, to which the notaries practicing in Cuba, Puerto Rico, the Philippines and the Peninsula may aspire if they request it, the senior one in the service of the profession shall be appointed, provided he possesses a notarial office of a higher or equal category to the vacant one, or being lower by one, two, or three grades, he has served more than four, eight, or twelve years, respectively.

ART. 7. For the filling of vacancies in notarial offices, the colonial department shall in each case institute the proper proceedings. There shall also be kept a book in which to enter the series to which the vacancies correspond, according to the dates on which they occur, which said department shall declare in each case.

ART. 8. If the vacancy is to be filled by transfer, it shall be announced in the *Gaceta de la Habana*, fixing the period of thirty current days from the publication in which to present applications to the dean of the notarial association to which the vacancy corresponds.

After the period of the call has passed, the board of directors of the same association shall classify the applicants in this series, taking into consideration in the first place their merits and services as notaries, and in the second place other merits and services, the category and length of service, and the fact of their waiting for orders (excedentes). Should there be more than three, a list of the three first shall be made, without prejudice to forwarding to the colonial department the papers of all the applicants who possess the legal requirements. The appointment of one of the three proposed in the list shall be made, if said list has been correctly prepared; otherwise it shall be returned to the board for amendment, in accordance with the foregoing provisions.

ART. 9. If the vacancies are to be filled by competition for promotion, the announcement shall be published in the *Gacetas* of Madrid, Habana, Puerto Rico, and Manila, the period of thirty days being fixed in Madrid and in each one of the islands of Cuba and Puerto Rico, and sixty in the Philippines, from the publication of the respective announcements, in which to present applications.

The notaries of the Peninsula, who desire to be appointed, shall present their petitions to the colonial department, and those of Cuba, Puerto Rico, and the Philippines shall forward them to the same department through the presiding judge of the proper audiencia, who shall transmit them by the first mail after the closing of the limit.

ART. 10. When the notarial offices are to be filled by competitive examination, the announcement of the vacancies shall be published in the official newspaper of Madrid, or of Habana, according as to whether the examination is to be held in the Peninsula or in Cuba, the period of thirty days being fixed in which the applicants may present their petitions to the colonial department or to the presiding judge of the audiencia of the territory where the vacancy has occurred, respectively.

If there are several notarial offices announced, they may be requested in one communication, stating briefly the ones desired and their order of preference, in a proper case.

In order that applicants may be admitted to the competitive examinations, they shall have to prove that they possess the conditions required for the position by article 10 of the notarial law and article 5 of the notarial regulations, for which purpose they shall attach to their petitions the proper documents which prove the same.

ART. 11. The competitive examinations shall be held in the manner prescribed by article 9 et seq. of the said regulations of October 29, 1873, with the modifications mentioned in the following articles:

ART. 12. The board which is to pass on the examinations held in the seats of the respective notarial associations shall be constituted in the manner established by the said article 9.

The board of examinations for those held in Madrid shall be composed of the official appointed by the colonial secretary, as president of the board, who must be a lawyer, and have the category of a chief of administration or associate justice of a territorial audiencia.

One professor of law of the Central University, appointed by the rector of the same.

One lawyer of the bar of Madrid, to be named by the dean of the same.

The dean of the notarial association of Madrid and the secretary of the same association, who shall act as secretary of the board.

ART. 13. The competitive examinations shall consist of two subjects for each applicant—one theoretical and the other practical. Both shall be public.

The first subject of the competitive examinations shall consist in answering twelve questions corresponding to the following matters: Two to civil law; two to mortgage legislation; two concerning notarial legislation; one to commercial law; one to penal law; one to administrative law; one to colonial legislation; one to legislation regarding stamped paper and the tax on property rights and transfer of property, and one to private international law.

The competitor shall select the twelve questions mentioned by lot, and shall answer them immediately, being allowed one hour and a half for this purpose.

The list relating to this examination shall consist of 240 points at least, two-thirds thereof to embrace civil law, mortgage legislation,

and notarial legislation, the remaining third including the other subjects.

The list relating to the practical exercise shall contain 50 themes at least, corresponding to the same number of public instruments. The competitor shall also select by lot one of the said themes, proceeding then, and during the period of one hour at the most, to draft and place the instrument in the protocol; and when delivering it to the board, he shall verbally state what may be the form of the drafting of said instrument or contract, its necessary clauses, the notices which must be made, and anything else which must be done until the instrument is placed in the protocol and the first copy issued.

The board shall see that there are in the boxes more than half the number of questions corresponding to each subject and theme for the second examination, and shall make no remarks nor ask any questions of the competitor.

ART. 14. The colonial secretary shall prepare the list of questions and themes which are to serve in all the competitive examinations for the two theoretical and practical examinations which shall be published in the *Gacetas* of Madrid and of Habana, and communicated to the presiding judges of audiencias, for the due uniformity in the examinations which may be held.

ART. 15. The notarial offices which have been announced in any of the series mentioned which can not be filled on account of a lack of applicants, or because the latter do not possess the necessary requisites, shall be filled according to the series to which they again correspond, placing them according to the dates in which the vacancies occur in the corresponding book and not being subject to competitive examination until they have been declared abandoned in the series.

ART. 16. The notarial offices which become vacant by virtue of the provisions of article 117 of the Regulations shall not be filled according to the series, but by competitive examinations, which shall also be held alternately in the Peninsula or in the island of Cuba.

ART. 17. As members of the boards of directors of Matanzas and Santiago de Cuba there may be elected notaries who do not reside in the capital, but the dean and the secretary must in all cases reside therein.

Notaries who do not reside in the capital of the association, who are elected for the board of directors, shall betake themselves to said capital only for the duties proper to the offices conferred upon them, making use of the privilege granted them by article 113 of the Organic Regulations, or previously obtaining in accordance with the same the leave of absence they may require.

ART. 18. In the case of legal substitution provided for in article 6 of the notarial law, in places where there exists more than one notarial office, they shall mutually substitute each other.

In places where there is only one official of this class, he shall be substituted by the one of the nearest town, to be designated by the judge of first instance, who shall inform the respective audiencia thereof at the proper time.

ART. 19. In places where there are two or more notaries, in case of the occurrence of a vacancy or legal substitution, the one who follows in seniority, according to his diploma, shall be the substitute, and if it should be the newest one, he shall be substituted by the oldest in seniority.

ART. 20. The substitutions which are ordered may be changed for just cause duly proven in administrative proceedings, on the decision of the chamber of administration of the audiencia of the territory to which the notarial office corresponds.

ART. 21. In the special cases referred to in article 115 of the Notarial Regulations, the notary who is temporarily incapacitated may designate another one of the same residence to substitute him, and should there not be another one, the substitution shall be made in the manner prescribed for vacancies.

ART. 22. The substitution of the vacant notarial offices does not give the substitutes any further right than to take charge of the protocol, being under the obligation to guard the same and to issue the copies which, in accordance with law, may be required thereof.

ART. 23. All prior provisions in conflict with the execution of the present decree are hereby repealed.

TEMPORARY PROVISIONS.

1. As long as there exist in the islands of Cuba and Puerto Rico alienated offices authorized to certify, conferred in perpetuity, and of anotadurías of mortgages the owners of which have a right to indemnification from the State for their respective offices, having requested it within the period fixed in the decree of February 25, 1874, February 28 and June 27, 1879, all the vacant notarial offices which exist at present and which may later become vacant, with the exception of those caused by pensions, the amount of which is to be paid by the successor in the notarial office, and which are treated of in article 117 of the Notarial Regulations of October 29, 1873, shall be filled without subjection to the series and with absolute preference between the owners of alienated offices of said classes to which the right to indemnification has been declared and who have renounced the same in due form to the State, according to the rules established in the royal decree of February 9, 1883, which grants said owners the right to personal presentation or of a third person for once only for notarial offices which may be vacant and which determined the manner of filling the same.

2. Should no owner of an alienated office who has a right thereto in accordance with the provisions of the said royal decree of February 9, 1883, request the vacancy, it shall be filled in accordance with the proper series, as provided in the present decree.

3. According to the royal decree of April 12, 1878, the owners of alienated offices conferred in perpetuity in the islands of Cuba and Puerto Rico who renounce in due form in favor of the State the indemnification treated of in the decree of February 25, 1874, and in the circular order of December 15 of the same year, shall have the right of nomination in person or of a third person for once only, provided they are legally eligible for the notarial offices which take the place of their offices in the same towns or districts, subject to the provisions mentioned, said notarial offices not being considered vacant.

Issued at the Palace on March 17, 1893.

MARÍA CRISTINA.

ANTONIO MAURA Y MONTANER,
Colonial Secretary.

Table of the notarial demarcation of the island of Cuba.

AUDIENCIA OF HABANA.

[Notarial Association of Habana—34 notarial offices.]

Province of Habana:	
Notarial district of Habana—	
Habana	20
Marianao	1
Bejucal	1
Guanabacoa	2
Güines	1
Jaruco	1
San Antonio de los Baños	1
Province of Pinar del Rio:	
Pinar del Rio	2
Consolación del Sur	1
San Juan y Martinez	1
Guanajay	1
Guane	1
San Cristobal	1

AUDIENCIA OF MATANZAS.

[Notarial Association of Matanzas—23 notarial offices.]

Province of Matanzas:	
Matanzas	4
Alfonso XII	1
Cárdenas	2
Colón	1
Jovellanos	1
Province of Santa Clara:	
Santa Clara	3
Cienfuegos	2
Sagua la Grande	3
San Juan de los Remedios	2
Sancti Spíritus	2
Trinidad	2

AUDIENCIA OF SANTIAGO DE CUBA.

[Notarial Association of Santiago de Cuba—18 notarial offices.]

Province of Santiago de Cuba:	
Santiago de Cuba	4
Baracoa	2
Bayamo	1
Guantánamo	1
Holguín	1
Gibara	1
Manzanillo	2
Province of Puerto Príncipe:	
Puerto Príncipe	4
Morón	1

Madrid, March 17, 1893.
Approved by Her Majesty.

MAURA.

TRANSLATION

THE NOTARIAL LAWS

IN FORCE IN

THE PHILIPPINE ISLANDS,

AND

APPENDICES RELATING THERETO.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT,
August, 1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

NOTARIAL LAWS IN FORCE IN THE PHILIPPINE ISLANDS.

COLONIAL DEPARTMENT.

ROYAL DECREE.

There having been submitted by the Colonial Department to the committee on codes of the same the notarial law of May 28, 1862, in force in the Peninsula, with the proper modifications for its execution in the Philippine Islands, approved by the said committee,

In accordance with the council of secretaries, at the suggestion of the colonial secretary, in the name of my august son the King, Don Alfonso XIII, and as Queen Regent of the Realm,

I decree the following:

ARTICLE 1. The notarial law of May 28, 1862, in force in the Peninsula, is declared operative in the Philippine Islands, with the modifications introduced in the accompanying law.

ART. 2. The law to which this decree refers shall become operative and be observed in all the Philippine Islands from July 1 next.

ART. 3. The regulations necessary for the carrying out of the law and of this decree shall be issued by the colonial department.

Given at the Palace, on February 15, 1889.

MARIA CRISTINA.

MANUEL BECERRA,
Colonial Secretary.

NOTARIAL LAW FOR THE PHILIPPINE ISLANDS.

TITLE I.

NOTARIES.

ARTICLE 1. A notary is the public official authorized to certify contracts and other extrajudicial instruments in accordance to law.

There shall be only one class of these officials.

ART. 2. A notary who, on being requested to certify to any public or private extrajudicial instrument, should refuse his services without just cause shall incur the liability which may be proper in accordance to law.

ART. 3. In each town which is the seat of a judicial subdistrict of the Philippine Islands there is hereby established at least one notarial office. The notarial offices shall include the same territorial limits as the subdistrict in which they are established. In towns where there is more than one court of first instance only one notarial office shall be established, with the exception of the capital of the Archipelago, in which there shall be eight notarial offices.

ART. 4. In order to change the point of residence of each notarial office in districts in which there is more than one, or to make subsequent changes in the notarial demarcation, there must exist some reason of necessity or public convenience, which shall appear in proceedings instituted by the general direction of grace and justice of the colonial department, in which there shall be taken into consideration the population, the frequency and facility of transactions, the proper maintenance of the notaries, the circumstances of the locality, and any other ones which may be deemed necessary, and there shall be previously heard the Governor-General, the audiencias, the governors of the provinces, the judges and notaries of the districts, collecting the statistical data which they shall furnish relative to transactions, also making a report to the department of the treasury and the colonies of the council of state.

ART. 5. Every notary shall make his own protocol.

ART. 6. In the case of the death, sickness, absence, disqualification, or any other class of incapacity of a notary, the notary immediately inferior to him in seniority of the same town, according to the date of his diploma, shall substitute him, and if he be the last one, he shall be substituted by the oldest in seniority, and in towns where there is only

one official of this class, he shall be substituted by the one of the nearest town. When the legal substitution is not possible for any reason whatsoever, the judge who is the dean or the judge of first instance of the subdistrict shall appoint a temporary substitute from among the notaries of the same district, or another competent person, should there not be a notary, until the decision of the presiding judge of the audiencia of the territory. The substitute shall cease in the discharge of his duties as soon as the appointee takes possession, or the incapacity of the notary whom he substitutes ceases to exist.

ART. 7. Notwithstanding the provisions of article 1, the petty governors (gobernadorcillos) of the towns more than 22 kilometers (or 4 leagues) from the respective seats, shall have the power to authenticate public instruments, which they shall forward within the twenty-four hours following their execution to the respective notary in order to have them placed in the protocol.

ART. 8. The residence of notaries must be the place designated in the notarial demarcation.

ART. 9. Notaries may discharge their duties indiscriminately within the judicial subdistrict in which their notarial office is situated, and outside thereof only in case of the legal substitution or authority treated of in article 6.

Towns in which there is more than one court of first instance shall be considered for the purposes of this article as a single judicial subdistrict.

TITLE II.

REQUISITES TO OBTAIN A NOTARIAL OFFICE AND TO ISSUE CERTIFICATIONS.

ART. 10. To be a notary it is necessary:

To be a Spaniard, and a layman, of age, of good habits, and to have passed the studies required for the notarial profession, or to be a lawyer, and not to have any physical impediment or defect to discharge said office.

ART. 11. The appointment of notaries of the Philippines shall be made by the colonial department.

Vacancies in notarial offices shall be filled by competition for promotion, transfer, or competitive examination, subject to the following rules:

1. In the competition for promotion series to which notaries in active service in the Philippines, Cuba, Porto Rico, and the Peninsula may aspire, provided they fill a notarial office of a higher or equal category to the vacant one, or if they are lower by one, two, or three grades, the notary has served more than four, eight, or twelve years, respectively.

In case two or more applicants of the same class apply, the following order of preference shall be observed: Notary of the same notarial district; notary of the territory of the same association; notary of another notarial association.

2. In the series of transfer the Government may transfer notaries of the Philippines, at their request, and as a reward without observance of any order of preference among the applicants, but it can not transfer to a notarial office of a higher class, unless the applicant has previously filled the position in a notarial office of a lower category for at least four years. No special time shall be required for notaries of the same category.

In this series notaries lower by two or three grades to the vacant one may aspire, provided they have served eight or twelve years, respectively, but they shall only be appointed in default of those who possess the conditions mentioned in the foregoing paragraph. The board of directors of the notarial association shall classify the applicants in this series, taking into consideration first their merits and services as notaries, and second other merits and services, the category and length of service. If there are more than three, a ternary shall be formed of the first three without prejudice to forwarding to the general direction of grace and justice of the colonial department the records of all the applicants who possess the legal qualifications. The appointment shall be made of one of the three proposed if the list is correctly made; otherwise it shall be returned to the board, in order that it may be amended in accordance with the foregoing provisions.

3. The vacant notarial offices which, having been announced as open to competition for promotion or to transfer, can not be filled on account of a lack of applicants, or because the latter do not possess the necessary requisites, shall be filled by competitive examination in the Peninsula.

ART. 13. All other means to obtain a license are hereby abolished.

ART. 14. Notaries before taking possession of their office shall give a guaranty as security for the discharge of the duties thereof.

Said guaranty may consist of a deposit in the treasury of the State in coin or in bonds of the public debt, or either in rural or town property mortgaged for the purpose, guaranties which produce an annual income, the interest on which shall be fixed in the regulations or by means of a special decree.

ART. 15. Notaries, in order to enter upon the discharge of their duties, shall take before the presiding judge of the audiencia of the territory an oath of allegiance to the King and to comply with all the obligations imposed upon them by the laws.

The notary shall take possession by presenting a certified copy of the oath.

ART. 16. The duties of the office of notary are incompatible with those of a deputy to the Cortes, justice of the peace, or assessor of the same acting as judge of first instance, secretary of said court, alcalde, or member of a town council, and with any other office or employment which carries jurisdiction or is remunerated from funds of the State, province, or municipality, or which requires him to reside outside of his domicile.

TITLE III.

PUBLIC INSTRUMENTS, THEIR COPIES, PROTOCOLS, AND BOOKS TO BE KEPT BY NOTARIES.

ART. 17. It is the duty of notaries to draft and authenticate original and other instruments, issue copies of either, and to take depositions and make protocols and keep books.

An original instrument is the one which a notary must execute on the contract or instrument submitted for his authentication, signed by the parties interested, by the attesting witnesses, or, if proper, by the witnesses of identification, signed and marked by the notary himself, and with the other requisites and formalities required by the laws.

A notarial instrument is the one in which a notary certifies to having issued any certified copy which is not taken from the protocols or from the books of the notarial office, making a brief extract thereof.

A first copy is the transcript of the whole or part of the original instrument which each of the executors or parties interested has a right to receive for the first time.

By second copy is understood any copy which does not fill the requisites established above.

A certified copy or deposition (testimonio) is the instrument in which a notary certifies to any act, or in which he inserts or relates in part or in whole an instrument, stating its conformity with the other document, or the instrument in which he does both things.

By protocol is understood the collection in proper order of the original instruments authenticated during one year, which shall be included in one or more bound volumes, folioed by the number written out, and with the other requisites prescribed by the regulations.

A notarial book is the one in which a notary copies the wrapper of sealed wills and codicils, and in which he places the original of other testamentary provisions, for which the parties interested desire greater secrecy, and is composed of the collection of instruments for one or more years.

ART. 18. Second or subsequent copies of an original instrument can not be issued except by virtue of a judicial mandate, and with the citation of the persons interested, or of the department of public prosecution, when the latter are unknown or absent from the town in which the notarial office is situated.

Said citation shall not be necessary in unilateral instruments and even in others when the copies are requested by all the parties interested.

ART. 19. Notaries shall authenticate all public documents with their signature and with the rubric and mark they may select for the purpose, and which they can not change without authority from the Government.

In each audiencia there shall be a book in which the notaries shall

enter their signature, rubric, and mark after having taken their oath, and before taking possession of their office.

ART. 20. Notaries can not authenticate any public instrument *inter vivos* without the presence of at least two witnesses.

ART. 21. Neither the relatives of the persons interested nor those of the notary who authenticates the instrument can be witnesses thereto, both being understood within the fourth degree of consanguinity or second of affinity.

Nor can the officers, clerks, or servants of the said notary, nor persons totally disqualified according to the laws, be witnesses.

ART. 22. No notary can authenticate a contract which contains a provision in his favor, or to which any of the parties interested is a relative of his within the fourth civil degree or second of affinity.

ART. 23. Notaries shall certify in public instruments that they are acquainted with the parties thereto, or that they have assured themselves of their identity by the declaration of the attesting witnesses, or by two other persons who are acquainted with them and who shall therefore be called witnesses of identification.

They shall also certify as to the residence and profession of the parties interested.

In serious and extraordinary cases, in which it is not possible to state this data in full, they shall state what they themselves know on the subject and what is declared by the attesting witnesses and those of identification.

They shall also state in every instrument that the parties thereto have the legal capacity necessary to execute the instrument or contract in question, which circumstance shall be determined by the judgment of the notary himself, it not being sufficient that he enter the fact in the instrument on the statement of the persons interested only.

ART. 24. In all public instruments the notary shall state his name and residence, the names and residences of the witnesses and the place, year, and day of the execution of the instrument.

ART. 25. Public instruments shall be drafted in the Spanish language, and shall be clearly written, without abbreviations and without blank spaces.

In the statement of dates or amounts therein figures shall not be used.

Notaries shall certify to having read the instrument in full to the parties interested and to the attesting witnesses, or to having permitted them to read it, as they chose, before they signed it, and to the witnesses of identification the part that refers to them, and to having informed them all that they have a right to read it themselves.

ART. 26. Additions, marginal notes, interlineations, erasures, or blots in original instruments shall be of no effect if they are not mentioned at the foot of the instrument and expressly approved of by the persons interested and bear the signatures of the persons who must subscribe the instrument.

ART. 27. Public instruments shall be null—

1. When they contain any provision in favor of the notary who authenticates them.

2. In which relatives of the persons interested or the relatives, clerks, or servants of the said notary appear as witnesses in the degree mentioned.

3. In which the notary does not certify to being acquainted with the persons interested, or in which he does not state this fact in the manner prescribed by article 23 of the law, or in which the signatures of the interested parties and witnesses do not appear when they are required to sign, and the signature, rubric, and mark of the notary.

ART. 28. Provisions in favor of relatives of the person who authenticated the document containing the same, within the degree previously mentioned, shall have no effect.

ART. 29. The provisions contained in the foregoing articles relative to the form of the instruments and the number and qualifications of the witnesses are not applicable to wills and other provisions *causa mortis*, in which the special law or laws governing the matter shall be observed.

A notary who is a relative within the fourth degree of consanguinity or second of affinity of the heir or legatee mentioned in open wills can not authenticate the will containing such provisions. Contravention of this article shall produce the nullity of the will.

ART. 30. All kinds of public instruments authenticated by a notary shall be admitted as evidence within the district of the audiencia in which he resides. In order to be admitted as evidence outside of said district the signature of the notary who authenticated the instrument must be certified to by two other notaries of the same district, where there are any, or otherwise with the countersignature of the judge of first instance, who shall, moreover, place the seal of the court thereto.

ART. 31. Only the notary legally in charge of the protocol may issue copies thereof.

ART. 32. Only and exclusively in cases of force majeure may the protocols and original instruments be removed from the building in which they are kept. However, an original instrument may be removed from the protocol if there appears sufficient reason or cause to consider it as proof of a crime, a previous order, with the reasons therefor, of the court taking cognizance of the case being necessary, and a verbatim certified copy in any case being issued with the consent of the department of public prosecution.

Neither shall notaries permit any document to be taken from their archives which are under their charge by reason of their office, nor shall they permit the protocols to be examined in whole or in part, unless by virtue of a judicial decree, except by the parties interested, their heirs or representatives, who have an acquired right. However, in the cases determined by law, and by virtue of a judicial mandate,

they shall exhibit in their archives the protocol or protocols in order to attend by virtue thereof to the proceedings that may have been agreed upon.

ART. 33. Notaries shall forward through the judge of first instance to the presiding judge of the respective audiencia, within the first eight days of each month, indices of the original instruments executed during the previous month, stating the ordinal numbers which the latter have in the protocol, or a certificate that none have been executed, placing certified copies of said indices at the end of the protocol.

In the indices there shall be stated, with regard to each instrument, the names of the parties thereto, those of the attesting witnesses, those of the witnesses of identification, in a proper case, the date of the execution, and the purpose of the instrument or contract.

ART. 34. Notaries shall keep a private book in which they shall enter with the proper numeration a copy of the wrappers of sealed wills and codicils, the execution of which they may have authenticated, and the protocols of the open wills and codicils when the testators request it, and they shall also forward a private index to the presiding judge of the audiencia, through the judge of first instance, as prescribed in the preceding article. It is not necessary that there be one book for each year.

ART. 35. They shall further keep a private protocol in which they shall enter original instruments recognizing illegitimate children when the persons interested do not desire to have them appear in the general registry. They shall also transmit a private index of the instruments thus recorded through the judge of first instance to the presiding judge of the audiencia, and they shall not be required to make a different protocol for each year.

TITLE IV.

OWNERSHIP AND CUSTODY OF PROTOCOLS AND INSPECTION OF NOTARIAL OFFICES.

ART. 36. The protocols are the property of the State. Notaries shall keep them in accordance with the laws, as archivists thereof, and under their responsibility.

ART. 37. There shall be in each notarial district a general archivist of public instruments, subject to the prescriptions of the regulations.

ART. 38. In the case of the vacancy of a notarial office and of the disability or incapacity of a notary, the person who, according to article 6 is to take charge of the office, shall receive the protocols and other documents, in accordance with an inventory, in order to return them with the same formalities to the said notary, if he is reinvested in his office, or otherwise to his successor.

The judges of first instance in seats of subdistricts and the justices of the peace in other towns shall be present when the inventory is taken and at the delivery.

ART. 39. In case of a partial or complete destruction of a protocol, the notary shall make a report to the judge and to the *Promotor Fiscal* of the subdistrict, and the latter to the presiding judge and *Fiscal* of the audiencia, respectively, in order that the proper proceedings having been instituted with a citation of the parties, the indices and the books compared, and any other data which may be proper examined, the protocols and books be restored as far as practicable.

TITLE V.

DIRECTION AND INSPECTION OF NOTARIAL OFFICES AND DISCIPLINARY JURISDICTION OVER NOTARIES.

ART. 40. The notaries of the Philippine Islands are under the jurisdiction of the colonial department.

ART. 41. All that refers to notaries of those islands shall be in charge of the bureau of civil and property registries and of notaries, established under the dependency of the general direction of grace and justice of the colonial department by the mortgage and civil registry laws of the islands of Cuba and Porto Rico.

ART. 42. It behooves the general direction of grace and justice—

1. To suggest to the colonial department the provisions necessary for the establishment of notarial offices in the Philippine Islands, and to insure in the same the observance of this law and of the regulations, instructions, and orders which may be issued for its execution, circulating or communicating them respectively to the boards of directors of the notarial associations and to the presiding judges of audiencias.

2. To institute the proceedings which may be necessary to fill vacant notarial offices, and in order to hold the competitive examinations in necessary cases, indicating the definite decision which may be proper in each case in accordance to law.

3. To decide, previously hearing, when it considers it proper, the report of the general direction of civil registries and those of property and of notaries, the doubts which may arise in the minds of the officials intrusted with the application of the present law regarding the interpretation and execution of said law and of the regulations.

4. To exercise a general inspection and surveillance of all the notarial offices of the Philippine Islands, acting in this connection with the presiding judges of audiencias and the boards of directors of the notarial associations.

The other powers of the direction shall be fixed by the regulations.

ART. 43. Notaries shall establish associations in the territory and in the towns which may be designated in the regulations.

All the notaries of the territory assigned to each association shall belong to the same.

The associations shall be governed by boards, in which the judicial and public prosecutions officials delegated by the Government shall be represented in the manner designated in the regulations.

ART. 44. The presiding judge of the audiencia shall be the inspector of the notarial offices of his territory, for the purpose of seeing that this law, the regulations and instructions, and other provisions issued for its execution are duly observed in the same, and to see if the protocols and books are well kept, and to correct and punish the offenses or omissions which may be committed.

He shall exercise the right granted him for this purpose through the judges of first instance of the respective subdistricts, or, in their default, by the justices of the peace, who shall be their delegates for this purpose.

In towns where there is more than one court of first instance the delegation shall be exercised by the judge appointed by the presiding judge of the audiencia.

ART. 45. The presiding judge of the audiencia shall order all notarial offices inspected through a delegate at least once every six months, making a memorandum of the condition in which they are found.

ART. 46. The presiding judge of the audiencia may himself, or through his delegates, besides the regular half-yearly visit, make the extraordinary ones he may deem convenient, either general, of all the instruments, protocols, and books of the notarial offices and even of the archives, or partial, of any of the above, making the memoranda in accordance with the provisions of the foregoing article.

For the extraordinary inspections the presiding judge may delegate his functions, if he deems it necessary, to an associate justice of the audiencia or to a judge.

ART. 47. The delegates shall forward to the presiding judge of the audiencia the memoranda mentioned in articles 45 and 46 within the six days following the termination of the inspection.

ART. 48. The presiding judge of the audiencia shall submit in the first three months of each year to the general direction of grace and justice of the colonial department a detailed statement of the condition of the notarial offices subject to his inspection and surveillance.

ART. 49. If the presiding judge of the audiencia observes or receives information through his delegates of any violation of the law or of the regulations for its execution, he shall adopt the measures necessary to correct the same, in accordance with the said law, making a report to the general direction of grace and justice of the colonial department.

If the offense or violation noticed may be classified as a crime, he shall place the delinquent at the disposal of the courts.

ART. 50. The presiding judge of the audiencia shall also inform the general direction of the offenses committed by boards of directors of notarial associations with regard to the observance of this law and of its regulations.

ART. 51. Notaries shall consult directly with the presiding judge of the audiencia or with the board of directors of the notarial association any doubt which they may have regarding the interpretation or execution of this law or of the regulations which may be issued for its appli-

cation; but the consultation in no case shall suspend the proceedings in the action.

If the board of the association, having been consulted, is in doubt as to the decision to be adopted, it shall forward the consultation with its report to the presiding judge of the audiencia.

If the latter, having been consulted by the board, has the same doubt, he shall forward the consultation to the general direction of grace and justice of the colonial department, which shall decide what it may consider proper, hearing the general direction of registries in the manner and form prescribed by case number 3 of article 42.

ART. 42. The disciplinary jurisdiction over notaries shall be exercised by—

1. The boards of directors of notarial associations, in order to correct and punish abuses and informalities in the exercise of the profession and the offenses against discipline and others which may affect the decorum of the class, provided that they do not constitute a crime.

2. The presiding judges of audiencias, in order to correct and punish said offenses and the violations of this law or of the regulations, instructions, and other provisions issued for its execution, and those which are likewise committed with regard to the manner of keeping the archived protocols in their notarial offices.

3. The general direction of grace and justice of the colonial department may proceed against the boards of directors of the associations, and correct them for the omissions and other offenses which they may commit in the fulfillment of this law or of the provisions of the regulations.

The administrative or disciplinary corrections which may be imposed on notaries shall be those of warning, private or public reprimand, and fine up to 50 pesos.

Until the notarial association or board can be established in the territory of the audiencia of Cebú, the presiding judge of said audiencia shall have the powers granted by this law to the notarial board.

ART. 53. Notaries can not be administratively suspended nor deprived of their office.

TITLE VI.

FEES AND REMUNERATION OF NOTARIES.

ART. 54. Notaries shall receive the fees fixed in the schedule which shall be formed for the purpose.

ART. 55. At the foot of every certified copy or deposition, or copy of a document for which fees have been collected, the notary shall stamp the amount of those collected, citing the number of the schedule in accordance with which he demanded them.

ART. 56. A notary who is rendered incapacitated for the exercise of his profession for having saved the protocols from flood, fire, or other force majeure, shall be entitled to a pension from the State, the amount

of which shall be fixed by means of a royal order in each case, after proceedings in which the local authorities, the provincial board, and the audiencias of the territory shall be heard. Should he die on account of the same reasons his widow, minor sons, and single daughters, while they remain in that status, shall have the same right.

GENERAL PROVISION.

ART. 57. All that is prescribed in the preceding articles and in the regulations shall be observed in the Philippine Islands from July 1, 1889.

From this date there shall no longer be observed in said islands, and there shall be understood as repealed, all the laws, provisions, and customs relating to the organization of notarial offices.

TEMPORARY PROVISIONS.

1. The clerks and notaries who at the present time are issuing extrajudicial certifications, or both judicial and extrajudicial ones, by reason of being owners of alienated offices, by virtue of the corresponding diploma, shall continue to fill their offices in the places assigned to the same by their respective diplomas until they are naturally or legally rendered vacant, and they shall be considered notaries for all the effects of this law.

They may, however, aspire to the series of competition for promotion or transfer, and in case of being appointed to notarial offices situated in other towns than the ones assigned in their respective diplomas it shall be understood that they have renounced to the indemnification for the value of their alienated offices.

During the time they reside in the towns mentioned in their diplomas they shall be permitted to give as a guaranty for the effects of article 14 of this law the value of their offices, and when it is not sufficient to cover the corresponding amount they shall complement it in the manner and with the securities therein mentioned.

2. All persons who at the time of the publication of these provisions are filling, by virtue of the proper diploma, offices authorized to issue judicial and extrajudicial certifications, as administrators of alienated offices or temporary substitute notaries, shall continue to discharge the same duties until the notaries appointed in accordance with this law and its temporary provisions take possession, and to whom they shall be obliged to deliver their protocols, papers, and instruments on said day.

3. The deposits of public instruments which are in the possession of judges or of persons who are not notaries, shall also be forwarded to the archives of the notary or notaries who may be appointed for the district.

4. Those which exist in towns corresponding to one notarial office only shall be taken to the archives of the nearest one which may be created within the district, and those in towns where two or more

notarial offices shall be established, to the archives of those which have the smallest number of protocols, as may be directed by the judge delegated to the inspection.

5. Notwithstanding the incompatibility established by article 16 of this law, the notaries appointed in accordance with the same, or in accordance with the decree of September 16, 1874, may be authorized by the audiencias, reporting to the Government, to fill the recording clerkships of the courts of first instance in subdistricts where it is necessary, in commission until the law on judicial organization is published, or some other provision regarding recording clerks is issued.

6. The notarial offices of the Philippine Islands shall be filled for the first time in accordance with the following rules:

(*a*) The notaries appointed by competitive examination, in accordance with the decree of September 16, 1874, shall have preference to solicit any of the notarial offices which may be created in said islands, forwarding their petitions to the colonial department through the presiding judges of the proper audiencias within the period fixed by the corresponding call; the proper appointments being made by the colonial department, taking into consideration, when there are more than two applicants for one notarial office, their merits and services. Said notaries shall be exempt from the obligation provided for by article 14 of this law.

(*b*) The other notarial offices shall be filled by competitive examination in accordance with the prescriptions of this law and its regulations.

After the notarial offices have been filled once in this manner they shall subsequently be filled in accordance with the provisions of article 12 of this law.

Madrid, February 15, 1889.

Approved by Her Majesty. BECERRA.

PROVISIONAL REGULATIONS FOR THE ORGANIZATION AND MANAGEMENT OF NOTARIAL OFFICES IN THE PHILIPPINES.

OF APRIL 11, 1890.—GACETA OF MAY 5.

PROVISIONAL REGULATIONS FOR THE ORGANIZATION AND MANAGEMENT OF NOTARIAL OFFICES IN THE PHILIPPINE ISLANDS.

TITLE I.

NOTARIAL OFFICES, THEIR NUMBER, DEMARCATION, AND CLASSIFICATION.

ARTICLE 1. In accordance with article 3 of the notarial law, the number of notarial offices and the place of residence of the notaries in the Philippine Islands shall be those specified in the notarial demarcation published at the end of these regulations.

ART. 2. The notary shall have his fixed residence at the place designated in his diploma, in accordance with the notarial demarcation established in the manner mentioned in the foregoing article.

ART. 3. For all the effects of the notarial law, of these regulations, and of the other provisions relating to the organization and management of offices authorized to issue certifications, the notarial offices shall form districts and the latter shall constitute associations in accordance with the notarial demarcation.

The notarial offices are understood as classified for said effects into three classes:

1. Notarial offices of the seat on an association.
2. Notarial offices of the capital of a province.
3. Notarial offices of the other towns in which they are or may hereafter be established.

TITLE II.

APPLICANTS FOR NOTARIAL OFFICES.

ART. 4. In order to aspire to the diploma of a notary it is necessary to possess the qualifications prescribed by article 10 of the law; not to have any permanent physical impediment to discharge the office, to be a lawyer, or to have finished the notarial career, in accordance with the laws or regulations of public instruction.

ART. 5. There may be admitted to the competitive examinations for vacant notarial offices which are to be filled in this manner, the applicants who possess the necessary qualifications for the purpose, notwithstanding that they are not of age, provided they are within two

months at most of being so, counted from the day on which the limit fixed in the call in the *Gaceta* terminates; but in no case may a notary be appointed who is not of age on the date of the appointment, notwithstanding that he has been admitted to the competitive examinations and recommended by the board, by virtue of the provisions of this article.

TITLE III.

VACANT NOTARIAL OFFICES AND THEIR FILLING.

ART. 6. Notarial offices become vacant:

1. By death.
2. On account of permanent physical or moral incapacity, declared by virtue of administrative proceedings.
3. By a final judgment sentencing to perpetual disqualification, absolute or special, for the office of notary.
4. By resignation of the office.
5. By abandonment of the office.
6. By transfer.

ART. 7. In order to fill vacancies in notarial offices in accordance with article 12 of the law, after they are known to the colonial department, the general direction of grace and justice shall institute the proper proceedings for each case.

If the vacancy is to be filled by competition for promotion, it shall be announced in the *Gacetas* of Madrid, Manila, Havana, and Porto Rico, the period of thirty current days being fixed in Madrid and in each of the islands of Cuba and Porto Rico, and sixty days in the Philippines, from the date of the publication of the respective advertisements for the presentation of petitions.

The notaries of the Peninsula who aspire to be appointed shall forward their petitions to the colonial department through the general direction of grace and justice, and those of the Philippines, Cuba, and Porto Rico through the presiding judge of the respective audiencia, who shall forward them to the said direction by the first mail after the termination of the limit.

If the vacancy is to be filled by transfer the advertisement shall be inserted in the *Gaceta de Manila* only, the period of sixty days from the date of the publication being fixed in which to present petitions to the dean of the notarial association to which the vacancy corresponds, in order that the board, after said period has terminated, may make the classification prescribed by rule 2 of article 12 of the law.

Said board shall forward the proceedings instituted to the general direction of grace and justice of the colonial department within the fifteen days following the termination of the limit of the call.

When the notarial offices are to be filled by competitive examination, the announcement of the vacancies shall be inserted in the official newspaper of Madrid or of Manila, according as to whether it is to

take place in one town or the other, the period of thirty days being fixed in the former case and sixty in the second for the presentation of petitions.

If there are several notarial offices announced, they may be solicited in one petition, stating briefly those they desire and the order of preference in a proper case.

In the general direction of grace and justice there shall be kept a book in which to enter the series of succession to which the vacancies which may occur correspond.

ART. 8. Applicants in order to be admitted to the competitive examinations must previously prove that they possess the qualifications prescribed in articles 10 of the law and 4 of these regulations.

ART. 9. The competitive examinations shall take place alternately in Madrid and in the Philippines, the first being held by half in each one of said capitals, and the succeeding ones beginning the series with Madrid.

The board of examiners in Madrid shall consist of—

The general director of grace and justice of the colonial department, who shall be the president.

A professor of law, appointed by the rector of the university.

A lawyer appointed by the dean of the association of Madrid.

The dean of the notarial association of Madrid.

The secretary of the board of directors, who shall act as the secretary of the board.

In the Philippines the board shall be composed of—

The presiding judge of chamber or an associate justice of the audiencia of Manila, appointed by the presiding judge of said audiencia, who shall preside.

A professor of law of the University of Manila, appointed by the rector.

A lawyer appointed by the Governor-General of the Philippines.

The dean of the notarial association.

A register of property of Manila, who shall act as secretary, one series being established between both, which shall begin with the senior in the career.

It is the duty of the board to adopt the proper measures regarding the presentation and the call of the competitors, designation of the place to hold the same, and everything else relating to the competitive examinations.

ART. 10. The boards of examiners of the competitive examinations shall meet within the period of fifteen days, counted from the date of the termination of the call, and they shall publish in the official newspapers and exhibit in their secretary's office, thirty days in advance of the date of the commencement of the exercises, the programmes in conformity with which the examinations are to be held.

The programme relative to the theoretical examination shall consist

of 240 points at least, two-thirds thereof including civil law, mortgage and notarial legislation, and the remaining third the other studies.

The programme relative to the practical examination must contain 50 themes at least, corresponding to the same number of public instruments.

ART. 11. The competitive examination shall be public, and shall consist of two subjects, one theoretical and one practical.

For the theoretical subject the twelve questions which each competitor must answer shall be distributed as follows: Two on civil law, two on mortgage legislation, two on notarial legislation, one on commercial law, one on penal law, one on administrative law, one on colonial legislation, one on legislation on stamped paper, and the tax on property rights and transfer of property, and one on private international law. The competitor shall select the twelve questions mentioned by lot, and shall answer them at once, being allowed one hour and a half in which to do so.

For the practical subject the competitor shall select by lot one out of the fifty slips of paper, mentioned in the foregoing article, on a question relating to the drafting and placing in the protocol of public instruments, which he shall draft at once, being allowed one hour for this work, and in delivering it to the board he shall state verbally what is the form of the drafting of said instrument or contract, what its necessary clauses, what notices he must include therein, and anything else to be done until the instrument is placed in the protocol and the first copy issued.

The board shall take care that there is always in the boxes more than half the questions corresponding to each subject and to the themes corresponding to the second exercise, and shall not make any remarks to nor ask any questions of the competitor.

ART. 12. At the termination of the competitive examination the board shall, behind closed doors, classify the competitors, taking into consideration the results of the examinations.

The board shall draft, after having classified the competitors, a general classification of the same, and shall arrange them according to the order of merit of their examinations.

If only one notarial office is to be filled, the board shall recommend for the vacancy the three first applicants included in the general classification.

If the competitive examinations are for two or more notarial offices, a ternary shall be recommended for each one of the vacancies. This ternary must be made up from a number of the applicants who are best qualified, double that of the notarial offices announced.

The first half of this group of competitors recommended is entitled to the best places in the ternaries, and must be preferred in the repetition of names to complete them; taking into consideration, furthermore, the importance of the notarial offices, the order of the applicants

in the general classification, and the individual petitions which may be made in requesting the same.

The board of examiners of the competitive examinations shall forward to the general direction of grace and justice of the colonial department the general classification above-mentioned, and the ternaries with the personal records of the competitors.

If the latter are not correctly drafted, they shall be returned to the board in order that they may be amended in accordance with the prescriptions of this article.

ART. 13. In view of the proceedings for filling notarial offices, and after recommendation from the said general direction of grace and justice, the appointment shall be made by the colonial department. In cases of competitive examinations the appointment for each vacancy must be given to one of the competitors included in the respective ternary.

ART. 14. The appointments of notaries shall be published monthly in a list or statement in the *Gacetas* of Madrid or of Manila, either made by virtue of competitive examination or by competition for promotion or by transfer, without prejudice to communicating the same to the Governor-General of the Philippines, to the presiding judges of the respective audiencias, and to the deans of the associations.

TITLE IV.

GUARANTY, DIPLOMA AND POSSESSION OF NOTARIES.

ART. 15. A notary-elect shall appear before the general direction of grace and justice of the colonial department before obtaining his diploma, proving, for the effects of article 14 of the law, that he possesses the proper guaranty, which may consist of coin or of bonds of the public debt or other public securities legally admitted as surety, which shall be deposited in the treasuries of the State, or of rural or town property. The income thereof may accumulate, and there shall be stated in a certificate issued by the chief of the respective treasury that the bonds are subject to this guaranty, or by a certificate of the municipal council where the property is situated, or of the treasury of the province.

The guaranties may also be constituted through third persons, but in the latter case they can not be withdrawn unless they are substituted in a legal manner.

ART. 16. The income which must be shown for the effects of the said article 14 of the law shall be:

For a notarial office of the seat of an association, 250 pesos.

For a notarial office, the capital of a province, 125 pesos.

For other notarial offices, 62.50 pesos.

ART. 17. Notaries-elect who are in the Peninsula shall be allowed three months in which to give the guaranty, obtain the diploma, and

prove their departure, which period shall begin to be counted from the date of the appointment.

This period shall be extended to six months for those who are to give surety in the Philippines or in the Antilles. Should they not do so without just cause or having obtained an extension, they shall be understood to have renounced their right, and their appointments shall be null, and may be given to one of the other applicants.

The same action shall be taken if the second appointee does not appear. If the third appointment lapses for the same reason, the vacancy shall be again announced in the proper manner.

In order to take possession, and after the approval of the surety, they shall be allowed two months from the approval of the same.

These periods can not be extended except for good cause, duly justified.

If the notaries-elect are in the Peninsula, Cuba, or Porto Rico, they shall be entitled to official transportation as an advance from the State, if they should request it; but in such case they shall indemnify the amount thereof every three months with 15 per cent of the income of their notarial offices. The offices of the treasury in the Philippines shall see to the fulfillment of the foregoing provisions.

ART. 18. The diplomas of the notaries of the Philippine Islands shall be issued by the colonial department.

The copies of the diplomas, after the latter have been recorded, shall be attached to the personal records of the notaries.

No other fees shall be charged for diplomas but those due for the paper on which they must be drafted.

The diploma of a notary confers upon the person obtaining the same the character of a public official in all the acts of his office.

ART. 19. A new diploma shall be issued to every notary who is transferred, who shall attach it to the one he previously received, at the foot of which the presiding judge of the audiencia shall make a memorandum of cancellation.

ART. 20. After obtaining his diploma, the notary shall present it, as soon as possible, to the board of directors of his respective association, which, on the day fixed for the purpose by the dean, shall give possession to the notary-elect in public session, after administering the oath.

This formality shall be entered immediately after the royal diploma.

ART. 21. The secretaries of the boards of directors shall keep a book of minutes, in which they shall enter the taking of possession, and another book in which, after entering the former, the notaries shall enter the mark, signature, and rubric which they may adopt.

ART. 22. The new notary shall deliver to the board of directors of the association a full copy of his diploma, certified to by him in person, including the memorandum of the oath and the one of possession, with which formalities he shall be considered a member of the association.

The certified copy of the diploma shall be attached to the personal record which shall be made in the association for each notary.

ART. 23. The dean of the proper association shall communicate to the general direction of grace and justice of the colonial department, to the presiding judge of the respective audiencia, and to the Governor-General, the taking of possession of the new notary.

The presiding judge of the audiencia shall communicate also to the direction and to the judge of the subdistrict the date of the taking of possession, and the latter, in his turn, shall communicate the same to the justices of the peace of the towns included in the notarial district.

The justices of the peace shall communicate the same to the residents of their respective towns by means of edicts.

TITLE V.

INCOMPATIBILITIES AND PROHIBITIONS OF NOTARIES.

ART. 24. Notaries can not issue certifications outside of their respective notarial districts.

ART. 25. A notary may discharge his duties in the town of his residence and also indiscriminately in all the towns of the notarial district, in accordance with articles 6 and 9 of the law.

ART. 26. Notaries can not become surety for contracts which they may authenticate, nor take part in the notarial district—

1. In speculation, commerce, or transactions for gain which are not the product of their own property.

2. In the administration of any bank or discount or brokerage establishment, commercial or industrial company, or enterprise for the lease of public revenues.

3. In contracts or business they take part in, by reason of their office.

ART. 27. The notaries who accept any of the offices referred to in article 16 of the law shall cease in the discharge of their duties as notary during the time they are filling the former; but if the cessation exceeds three months, they shall be obliged to select one of the two positions.

Should they not do so, it shall be understood that they resign from the notarial office, and the vacancy shall be announced and filled.

ART. 28. Notaries shall not certify to incidents which occurred in public acts presided over by a competent authority without first informing the latter thereof, but the latter can not prevent the former from discharging the duties proper to their office after said requisite has been complied with.

ART. 29. The relatives of a notary within the fourth civil degree of consanguinity or second of affinity can not be notaries of the same town, unless there are in the latter two or more notarial offices filled by notaries who are not related to each other nor to the other notaries of the town.

ART. 30. Notaries who are appointed in accordance with the law can not for any reason whatsoever take part in judicial proceedings, except in the cases prescribed in temporary provision No. 5 of said law.

Notaries who, in accordance with said temporary provision, may have been authorized by the audiencias to serve in commission the offices of recording clerks of the courts on account of the necessity of the service, must be removed from said offices, even before the definite organization of this branch of service, whenever in the judgment of the chambers of administration of the respective audiencias they can be replaced with persons who have passed the notarial career in the University of Manila, or in any other one of the Kingdom, and in the lack of the latter, with competent persons, without any prejudice whatsoever to the interests of the administration of justice.

TITLE VI.

FORCED TRANSFERS, EXCHANGES, LEAVES OF ABSENCE, SUBSTITUTIONS, RESIGNATIONS, AND RETIREMENTS OF NOTARIES.

ART. 31. Notaries may be transferred against their will for just cause proven in administrative proceedings, after hearing the persons interested and receiving reports from the board of the association, the audiencia of the territory, the Governor-General, the general direction of grace and justice of the colonial department, and consultation with the section of the treasury and colonies of the council of state.

As just cause for transfer shall be considered any serious offense in the discharge of the office, or which lowers the notary in the public esteem, or for very important considerations of public order.

These forced transfers and those which are a consequence of the incompatibility established by article 29 shall be made to vacant notarial offices corresponding to the series of transfer or competitive examination, and shall not pass over a series.

Said transfers may be made outside of the territory of the association, but always to a notarial office of a category equal to the one which the transferred notary filled.

ART. 32. Each notary who is transferred shall be given a new diploma, in accordance with the provisions of article 19.

When a notary is transferred to another notarial office, he shall cease in the discharge of his office as soon as he receives the royal order of transfer or is officially notified; the judge of first instance of the subdistrict to whom said royal order shall be communicated by the presiding judge of the audiencia, being obliged to see that the notary transferred ceases in the discharge of his duties, until he obtains the proper diploma, and takes legal possession of the notarial office to which he has been transferred.

ART. 33. The notarial offices which are rendered vacant by virtue of the provisions of article 42, shall not pass over a series and shall necessarily be filled by competitive examination.

ART. 34. Exchanges between notaries belonging to the same or to different associations may be consented to, provided the notarial offices are of the same category and that there are not more than ten years' difference between the ages of the notaries effecting the exchange.

Exchanges in all other cases are forbidden, as well as when one of the notaries making the exchange or both of them at the same time are waiting for orders.

In the proceedings regarding the granting of exchanges there must be heard the respective boards of the notarial associations.

ART. 35. Notaries may absent themselves from their notarial office, if their services have not been called for, for five days, if they reside in a town where there is only one, and those residing where there is more than one for fifteen days. Whenever they make use of this privilege they shall inform the dean of the association.

If the latter or the local authorities observe on the part of a notary any abuse of this authority, they may report it to the board of the association or to the presiding judge of the audiencia, who shall impose upon the notary the proper disciplinary penalty, informing the general direction of grace and justice of the colonial department thereof. With the exception of the cases mentioned in the foregoing paragraph notaries can not absent themselves without previous permission, which shall be granted for just cause by the presiding judges of audiencias, if they do not exceed four months, and for the archipelago; by the general direction of grace and justice, if they exceed this period, after a report from the presiding judge of the respective audiencia. In the former case the petition for leave of absence shall be addressed through the dean of the notarial association; and, in the latter, through the presiding judge to the direction. Said leave of absence may also be advanced for a period of six months, in cases of urgency duly justified, by the Governor-General of the islands.

Every notary who makes use of a leave of absence to go abroad or to the Peninsula, shall be obliged to forward to the general direction of grace and justice of the colonial department a certificate of his arrival at the point where he is to enjoy the same, and a certificate proving his embarkation for his residence before the termination of the period for which said leave was granted.

He shall also be obliged to inform the dean of having returned to take charge of the notarial office on the same day he does so, in order that the latter may communicate it to the presiding judge of the audiencia, who shall inform the general direction of grace and justice of the colonial department thereof.

The boards of directors of the associations and the presiding judges of the audiencias shall see that no notary makes use of a leave of absence exceeding the time for which it was granted; and should they do so, they shall report the fact to the general direction.

ART. 36. If the period for which the leave was granted has terminated and the notary has not embarked for his destination, and after a

reasonable time from the date of the embarkation having elapsed he has not appeared to retake charge of his office, nor given good reasons which have prevented his doing so, it shall be understood that he has resigned, and the dean of the notarial association or the presiding judge of the audiencia shall inform the general direction of grace and justice thereof, which shall declare the notarial office vacant.

ART. 37. It is understood that the substitution treated of in article 6 of the law is temporary. Therefore the protocols shall not be transferred to the notarial office of the substitute. The documents authenticated by said substitute shall be placed in the protocol of the notary substituted, the former stating therein the capacity in which he acts.

In cases of absence, sickness, or temporary incapacity of a notary, the substitute who takes charge of his notarial office shall credit the former with half of the schedule fees earned during the time of the substitution.

ART. 38. When a substitute is obliged to take charge of a protocol on account of leave of absence, in accordance with article 6 of the law, the person substituted shall enter, immediately after or at the margin of the last original instrument in the protocol of public instruments, a memorandum, dated and signed on the day on which he absents himself, mentioning the leave of absence granted. On his return he shall make a similar memorandum on the last instrument of the said protocol to the effect that he has retaken charge of the notarial office.

ART. 39. The substitution of the vacant notarial offices does not give the substitutes any further right than to take charge of the protocol, being obliged to keep the same and to issue the copies which may be requested with reference thereto in accordance to law.

ART. 40. In case the substitution provided for in article 6 of the law is not possible, either because the residence of the notary of the nearest town is too far distant, or for any other reason whatsoever, the presiding judge of the audiencia may appoint a temporary substitute notary, giving the appointment to persons who have finished the notarial career in the University of Manila or in any other one of the Kingdom, to lawyers, or to persons who have the greatest possible fitness to fill the same.

Said persons shall be exempt from the obligation to give surety and to obtain a diploma, and subject to the other prescriptions of the law and of the regulations.

A report of these appointments shall be made to the notarial association, to the general direction of grace and justice, and to the Governor General.

ART. 41. Notaries may renounce their notarial office, but not in favor of any determined person.

The powers and duties of a notary who renounces shall not cease until said renunciation has been officially accepted and communicated.

ART. 42. When a notary who entered the career by competitive examination is incapacitated for the discharge of his office and is over 60 years of age and has filled the same for a period of twenty years, he may request that he be pensioned and his notarial office be declared vacant, the person taking the same being under the obligation to pay him a pension during his life, the amount of which shall be fixed in each case, at the suggestion of the respective notarial association, taking into consideration the importance of the notarial office and mentioning this encumbrance in the advertisement which may be made for filling the vacancy.

Said vacancies shall not pass over a series and shall always be filled by competitive examination.

ART. 43. A notary who is incapacitated for the reasons mentioned in article 56 of the law may make use of the privilege granted him by the foregoing article, although he has not reached the age nor served the number of years prescribed, but in such case he shall lose the right to the pension treated of in the said article 56.

ART. 44. The boards of directors of the associations, according to their funds, may order the grant of a fixed sum for once only to a notary who has made efforts to save his protocol or that of another notary from flood, fire, earthquake, or other force majeure, notwithstanding that he has not been rendered incapacitated nor suffered any personal bodily injury.

TITLE VII.

PROTOCOLS AND INDICES OF THE SAME—ORIGINAL INSTRUMENTS AND EXECUTION AND AUTHENTICATION OF PUBLIC INSTRUMENTS.

ART. 45. Each protocol shall comprise the original instruments, proceedings, and other instruments and documents included in the protocol or which are to be included therein every year, counting from January 1 to December 31, both inclusive, notwithstanding that during the course thereof some notarial office has become vacant and a new notary has been appointed.

ART. 46. All the documents placed in the protocol shall bear their proper number, written out, by order of dates.

At the head of every original instrument there shall be made a small extract giving an idea of the same, and of the names of the parties thereto.

ART. 47. All the sheets of the protocol shall be folioed with the number which belongs to them according to their order, also written out. Besides this foliation it may be added in numbers.

ART. 48. All the sheets of original instruments shall consist of full sheets. Pages 1 and 3 of each sheet in said instruments shall have at the left side of the writing a blank margin one-fourth of the width of the page, and at the right side a small margin in order that the

letters shall not reach the edges of the paper. Pages 2 and 4 shall also have at the left side a margin one-fourth of the width of the paper, and at the right side the margin necessary for the binding of the protocol.

On no page shall the blank margins exceed one-third of the width of the paper.

All the sheets of the protocol shall be rubricated by the notary on the larger blank margin, with the exception of those which by reason of the contents of the document are already signed or rubricated by the same.

ART. 49. Notaries must draft public instruments and records on the proper stamped paper, and they can not commence the drafting of any original instrument or record except on a new sheet and on the first page of each sheet, even the pages which may remain in blank being folioed and rubricated.

Memoranda which are to be made on original instruments or in the registry shall be made immediately after the same, if there is blank paper, and otherwise on the larger blank margin, commencing with the first page.

ART. 50. The protocol shall be opened on the first day of each year making the following memorandum:

"Protocol of the public instruments for the year ———." Date written out, signature, and rubric.

A new notary shall make a similar memorandum on any day of the year on which he takes possession of the office.

On the last day of the year the protocol shall be closed with the following memorandum:

"The protocol for the year ——— (written out) is closed, which contains (so many, written out) instruments, and (so many, written out) folios authorized during the same by the undersigned notary." Date written out, marked, signed, and rubicated.

ART. 51. When a notarial office becomes vacant, the judge of first instance, or, in his absence, the justice of the peace of the town of the said notarial office, shall inform the dean of the association and the presiding judge of the respective audiencia thereof, who shall communicate it to the general direction of grace and justice of the colonial department.

The judge, accompanied by the secretary of the court, shall enter immediately after the last instrument of the current protocol of public instruments the following memorandum, which shall bear the date written out and signed by both: "This notarial office of ——— has become vacant by (death, resignation, or whatever it may be), there being in this protocol authenticated up to this date (so many, written out) public instruments and (so many, written out) folios." Date and signatures.

ART. 52. The presiding judges of audiencias shall see that the indices of their protocols, current as well as secret, are archived

under their strictest liability, and which, according to articles 33, 34, and 35 of the law, the notaries are under the obligation to forward to them monthly.

The notary shall keep a signed copy of each of the monthly indices, which copies shall be bound at the end of the protocol, forming thus the general chronological index of the same.

In the case of article 51, the judge of first instance or the justice of the peace, in a proper case, shall make the index of the documents placed in the protocol and not included in the last monthly index, forwarding it to the presiding judge of the audiencia for the purposes mentioned, and leaving a copy in the notarial office.

The indices and their copies and the negative certificates thereof shall be executed on official paper.

ART. 53. The notaries shall forward the indices in a sealed envelope to the presiding judge of the respective audiencia, certifying on the wrapper and in the communication forwarding said document to the judge that the contents of the same are the indices referred to, then forwarding these documents without requiring postage, as official correspondence.

ART. 54. If during the month no instrument has been authenticated, the notary shall draft and forward to the board of directors and to the presiding judge of the audiencia, in the manner mentioned in the foregoing article, a negative certification in the following terms: I, N N, notary of ———, hereby certify that during the month of ———, last past, I have not authenticated any original instrument (or of acknowledgment of illegitimate children or of wills) which should have been included in the books or protocols of ——— (whatever it is).

"And in order that this may appear, and in compliance with articles 33, 34, and 35 of the law, I sign these presents at ———, on the —— day of ———, of ——."

The forms of the indices of the secret books and protocols must be exactly like those of the general protocol.

ART. 55. Notaries shall each day, in a pamphlet of official paper with the proper columns, keep the indices of the protocols which they are to bind at the end of the same.

Every month they shall copy from said pamphlet all that refers to the instruments authenticated during the previous one, in the manner prescribed by the preceding articles, for transmission to the audiencias.

ART. 56. In the first two months of each year the protocols must be bound, with the exception of the secret ones which are being made in accordance with articles 34 and 35 of the law.

When the annual protocol, on account of its volume, in the judgment of the notary, should be bound in more than one volume, the first one shall be closed and the second one shall be begun with the memoranda mentioned in article 50, altered in so far as necessary to indicate the months contained in each volume.

The different volumes shall not be considered as different protocols, for which reason the foliation of the first one shall not be interrupted nor begun again in the second volume, but that of the former shall be continued, there being stated in the final memorandum of the last volume of each annual protocol, besides the number of instruments and folios of the volume, the number of instruments and folios of all those which make up the protocol.

The opening and closing memoranda of the protocol shall be made on a separate sheet of official paper, which sheet shall not be folioed.

The protocol shall be bound in parchment, under the liability of the notary; the inside cover shall be larger than the outside one on the three sides which are not sewn, so that, being folded over the edges of the protocol, they may be fastened or closed over the outside cover, the edges of the sheets of the protocol being thus protected. On the back of the said book there shall be written in heavy characters: "Bulacán," (or the place of residence of the notary). "Protocol of notary ———." "Year of ———" (in figures).

ART. 57. The secret notarial books and protocols shall be bound at the end of the year in which the instrument bearing No. 100 was authenticated.

In the meantime the instruments and copies of the wrappers of testamentary provisions must be kept in wooden files, preserving the edges, tied and closed with bands sealed with wax, with the seal of the notary, and rubricated.

Whenever a new original instrument or copy of wrappers of sealed wills or codicils is to be placed in the wrapper said bands shall be renewed in a similar manner.

The special title of the volume when it is bound, or of the wrappers until this takes place, shall be—

For the notarial books referred to in article 34 of the law: "(Place of residence of the notary), secret notarial book for wills. Year of —— to —— (whatever it may be in figures)."

For the protocols treated of in article 35 of the law: "(Place of residence of the notary), secret protocol. Affiliations. Year of —— to —— (whatever it may be in figures)."

ART. 58. As a rule all protocols are secret. With the special notarial books and protocols treated of in articles 34 and 35 of the law, the formalities prescribed for the general protocols shall be observed in so far as they are applicable, complying with the prescriptions of the articles of the law cited in this one.

ART. 59. Notaries shall be responsible for the completeness and preservation of the protocols if they deteriorate on account of lack of care, and in such cases they shall be replaced at their cost, moreover incurring the fine or disciplinary correction which may be proper.

If there is any reasonable cause to suspect that a crime has been committed, the institution of an action shall immediately be begun.

ART. 60. The notaries shall guard the protocols and books in the same building in which they reside, and under their liability.

If in case of force majeure the protocols or books are removed from said building, or the notary is forced to deliver them after open resistance, he shall immediately and in the speediest manner, communicate the facts to the board of directors of the association and to the presiding judge of the respective audiencia, who shall report the same to the general direction of grace and justice of the colonial department, without prejudice to adopting the measures which the case may require.

ART. 61. Notaries shall authenticate public instruments by marking, signing, and rubricating. They may, furthermore, use the special seal of their notarial office.

In the copies there must be stated that the instrument is marked, signed, and rubricated.

Authority shall never be granted to any notary to mark or sign with a stamp.

ART. 62. Original instruments shall be drafted in accordance with article 25 of the law, making use of a clear, pure, and precise style, without any obscure or ambiguous phrase or term, and always observing as unavoidable rules truth in the expression, propriety in language, and severity of form.

When it is necessary to insert a document, paragraph, phrase, or word of another language or dialect, its translation shall be placed immediately thereafter, or what the executor understands by the foreign phrase, word, or name.

The Latin words *ad bona*, *ad litem*, or *ad lites*, relating to guardians, *a priori*, or *posteriori*, *inter vivos*, *causa mortis*, and others which, in legal language as well as in common language, are usual, or of well-known meaning, are not included in this provision.

When any of the parties interested or any of the attesting witnesses does not understand Spanish, being accustomed to provincial dialects, or being foreigners, the presence of interpreters is necessary, and after the reading of the document prescribed by article 25 of the law, the interpreter shall explain it in his own dialect or language, unless the notary is acquainted therewith, in which case he shall do so in person.

When the parties interested are foreigners and are not acquainted with Spanish, or documents drafted in a modern foreign language are in question, the presence of the interpreter or an authenticated translation of the document will be necessary, unless the notary is acquainted with the language thereof or is acknowledged as an official translator or interpreter, in which cases he shall state it in the instrument.

ART. 63. The abbreviations and blank spaces treated of in article 25 of the law do not refer to initials, abbreviations of phrases which are commonly used in addresses, titles of honor, expressions of courtesy, of respect, or of good remembrance, nor shall there be considered as blank spaces those which are at the end of a line when the following

one is the beginning of a new paragraph; but in the latter case the space must be covered with a line in ink.

The ink to be used in all notarial instruments must be black, without ingredients which might corrode the paper, or cause the writing to fade, blot, or disappear.

ART. 64. The original instruments shall be signed in accordance with the second paragraph of article 17 of the law, and in the presence of the number of witnesses mentioned in article 20 for public instruments *inter vivos*, and the special laws in the matter for wills and other provisions *causa mortis*.

If the parties interested or any of the witnesses do not know how or can not sign, the notary shall state this fact and a witness shall sign for him, without necessity of his writing in the final paragraph, that he does so in person as a witness and for the party or parties interested, who do not know how or are not able to do so, because the notary shall take care to state all these facts in the instrument itself.

ART. 65. As a general rule, all the witnesses must sign the instrument. If any one of the attesting witnesses does not know how or can not sign, the other one shall do so for himself and in the name of the one who for either reason can not do so; and if, finally, none of these witnesses knows how or is not able to sign, the signature of the parties interested and the authentication of the notary shall be sufficient, the latter stating that the witnesses do not sign because they can not or do not know how.

When there are moreover witnesses of identification in accordance with article 23 of the law, one at least should know how to sign, and he shall sign for himself and for the one who does not know how to do so, stating in either case the circumstances prescribed by article 24 with regard to witnesses.

In no case shall it be necessary for a witness who signs to write the clause before the signature with his own hand, provided the notary states clearly the capacity in which he signs in the instrument itself.

ART. 66. The impediments treated of in article 21 of the law do not refer to the witnesses of identification when they act only as such.

ART. 67. When the attesting witnesses are acquainted with the party or parties interested who are not acquainted with the notary, they may at the same time be witnesses of identification, in which case one at least should know how to sign and shall sign. On the other hand, the witnesses of identification can only be attesting witnesses when they do not have the impediments treated of in article 21 of the law. The notary must certify that he is acquainted with the witnesses of identification.

ART. 68. In the cases of the third paragraph of article 23 of the law, in which it is impossible for a notary to certify to being acquainted with the parties interested because he does not know them and they can not present witnesses of identification, he shall so state it in the

instrument, and shall enumerate therein the documents which are presented to him for the identification of said persons.

ART. 69. For the purposes of articles 21 and 27 of the law there is understood by employee, servant, amanuensis, or clerk, the person who serves in the house of the notary and renders routine services therein for a fixed salary and the person who usually renders services which are paid, although he does not live in his house.

ART. 70. The parties interested may oppose certain persons being attesting witnesses to the instrument, unless they execute the same by virtue of a law or judicial mandate.

ART. 71. The presence of the witnesses, attesting as well as of identification, in a proper case, is only necessary for the reading, acknowledgment, and signature of the original instrument, all of which shall take place at the same time.

ART. 72. It is not necessary for a notary to certify in each clause to the stipulations or circumstances which according to law need this requisite. It shall be sufficient for him to state at the end of the instrument the following or a similar clause: "And I, the notary, hereby certify to being acquainted with the parties interested (or with the witnesses of identification, in a proper case, etc.) and to all that is contained in this public instrument." With this, or an identical final formula, it shall be understood that all the clauses, conditions, stipulations, and other circumstances which require it, according to the laws, are certified to.

When a notary has stated in the body of a document that he is acquainted with the parties interested, it shall be sufficient for him to certify at the end of all the contents, in order to have it understood that he has expressly certified to his acquaintance with the former.

ART. 73. The certification of acquaintance, profession, age, status (whether married or single), and residence of the parties interested shall always be understood as given according to the personal *cédula* of the persons interested.

When companies of a public character subscribe or execute any document collectively in the proper representation, and when the presidents of said corporations take part in an execution in the name of the latter, they shall not be obliged to exhibit the *cédulas*.

The exhibition of a personal *cédula* is also excepted when a will *in articulo mortis* is in question, or the drafting of protest certificates on account of a forced arrival or averages of vessels, and in general in all public instruments the authentication of which can not be deferred more than twenty-four hours, it being sufficient for the notary who certifies to state this fact in the instrument.

ART. 74. A notary, besides the incompatibility for authenticating documents mentioned in article 22 of the law, can not authenticate an instrument in which he acquires a right as administrator, representative, attorney, or agent of a third person.

A notary, when there are not established in an instrument rights in his favor, but only obligations, may also be a party thereto, placing before the signature the words *before me* and *by me*, and in a similar case authenticate the obligations of his relatives.

ART. 75. The placing in the protocol of all kinds of instruments or contracts prescribed by the laws is the exclusive power of notaries.

When legally it is only necessary to place in the protocol judicial acts or proceedings which do not require the drafting of an original instrument, it shall be the duty of the notaries residing within the same judicial subdistrict to do so according to the following order of preference:

1. The notary of the subdistrict determined by law, if there is a law expressly applicable to the case in question.

2. The notary of the subdistrict unanimously designated by the persons interested in the judicial acts or proceedings.

When, by virtue of acts, proceedings, or judicial suits, it is necessary to draft an original instrument, the judge or court taking cognizance of the former shall order that it be drafted, authenticated, and filed in the protocol by the licensed notary residing in the town where the inferior or superior court is established, for which purpose the original decisions, certified copies, and data necessary for the compliance with the order shall be furnished him. If the data forwarded is not sufficient, the notary may request of the parties interested, or of the judge or court directly, the ones which are lacking to complete the documentation.

The selection of the notaries who have said qualifications belongs in the first place to the parties interested, if the designation is unanimous.

In the case mentioned in the second paragraph of this article, as well as that of the fifth, in want of a legal provision and of unanimous agreement between the persons interested, the judge or court shall appoint the notary whose turn it is, for which purpose he shall forward the proper communication to the dean of the association or to the presiding judge of the audiencia, if it should be in the seat of the latter, in order that he may appoint him, and who shall keep the proper book for the purpose. The appointment according to series or by the designation of the parties interested shall appear precisely in the decrees and in the instrument.

When the recording clerk is also a notary, said series may be omitted.

ART. 76. All registries and protocols not kept by licensed notaries in accordance with the law and these regulations are prohibited.

TITLE VIII.

COPIES OF THE PROTOCOL, AUTHENTICATIONS, AND ACTS WHICH TAKE PLACE BEFORE A NOTARY.

ART. 77. By public instruments, besides the original instrument, are understood the copies of the latter issued with the formalities of law.

ART. 78. Besides the copies of the original instrument, notaries may issue copies of the documents placed in the protocol or which are attached to the original instrument.

ART. 79. The copies of instruments shall contain an exact citation of the protocol and of the number which the original instrument bears therein, and must be issued, marked, signed, and rubricated by the notary.

It is not necessary to insert in the copies any particulars referring to the correction of errors, etc., which appear in the original instrument.

ART. 80. The first copies shall always be issued stating their character as such, and the same shall be done with the second or subsequent ones.

Two or more first copies may be issued, but each interested person can not demand more than one of the notary.

ART. 81. Whenever a first copy is issued the notary shall make at the foot of the original instrument, or at the margin thereof in a proper case, a memorandum, with his surname, of the person or persons for whom said first copy is issued, the date of the issue, the number of sheets and the kind of paper on which it is issued, and its number, also stating all these circumstances in the clause of the record of the copy.

ART. 82. Besides each one of the parties interested, according to article 17 of the law, any person in whose favor there appears recorded in the instrument any right, acquired either directly or through a subsequent instrument, shall be entitled to a first copy at any time. In the latter case there shall be stated in the memorandum of issue the capacity in which the person interested requests the copy.

ART. 83. The person who, according to the protocol, has obtained his first copy, can not obtain another one without the formalities of article 18 of the law. Whenever second or subsequent copies are issued, they shall be entered in the same manner as prescribed for first copies, and there shall be entered before the record all the memoranda which appear in the original instrument. There shall also be mentioned the judicial mandate by virtue of which second or subsequent copies may have been issued; but this mandate shall not be necessary when the citation treated of in article 18 of the law is not required.

Neither shall a mandate nor a citation be necessary, except when a second or subsequent copy is requested, by virtue of which the compliance of an obligation to give or to do something can be sued for.

ART. 84. In order to issue first or subsequent copies in accordance with article 31 of the law, it shall be understood that the protocol is legally—

1. In charge of the notary who fills the notarial office.

2. In charge of the notary filling the same in case of vacancy, absence, or incapacity of the regular incumbent.

3. In charge of the notary in charge of the archives of protocols.

Neither officially nor at the instance of an interested party shall courts order that recording clerks, by virtue of a judicial order or

instrument certified by a notary, issue copies of original instruments, but they shall request them of the notary, whose duty it is to give the same, according to the law and the foregoing paragraphs. For the comparison or acknowledgment of these copies, the prescriptions of the third paragraph of article 32 of the law shall be observed.

ART. 85. For the effects of article 30 of the law, the signature of the lawyer who authenticates must be legalized whenever the document is to be acknowledged outside of the territory of the association to which the former belongs.

ART. 86. By legalization is understood the certificate written immediately after a document authenticated by a notary, dated, marked, signed, and rubricated by two notaries of the same district, or in default of the latter, with the countersignature of the judge of first instance and the seal of the court, certifying that the notary who authenticates uses a mark, signature, and rubric similar to those legalized; that these appear to be of his hand, and that he was discharging his duties on the date of the document, nothing to the contrary being known.

For the legalizations the following form shall be used: "The undersigned, notaries of the association of ———, notarial district of ——— (or judge of first instance of ———), hereby legalize the above mark, signature, and rubric of notary Mr. ——— (date, signatures, and seals)."

When the legalization is placed or concludes on a new sheet, a brief statement of the document shall be made therein, the mark, signature, and rubric of which may have been legalized.

ART. 87. The legalizations shall bear the seal of the notarial association.

The boards of directors shall prescribe the style of these seals, the only ones which can be placed on legalizations, and which shall be of two kinds—one for documents for which fees are due, the amount of which, being the one fixed in the schedule, shall be applied by the boards of the associations to the purposes of the same, and another one for documents issued officially or for poor persons.

The boards shall take care that the notaries are duly provided with said seals.

ART. 88. Notaries who are members of a board of directors of a notarial association may, during the time they are such, and stating their capacity, legalize the mark, signature, and rubric of any one of the notaries of the territory.

ART. 89. No notary can refuse to legalize without giving good reasons; but if he has any doubt regarding the mark and signature he may defer his legalization for three days in order to dispel his doubts. Should he not be able to dispel them, he may refuse to legalize, retaining the document and reporting immediately to the board of directors, stating the reason, in order that it may at once adopt what may be proper.

ART. 90. Besides the powers granted notaries with regard to the protocol by article 17 of the law, the latter may authenticate, in accord-

ance with the copy, copies of documents which are not placed in the protocol; that is, depositions for presentation as evidence, certifications of existence, certify to the legality of signatures of authorities, public employees, and all classes of persons, when they are acquainted with the same, and, in general, draft and authenticate instruments at the instance of a party, in which are recorded acts and circumstances at which they were present or are certain of, and which by their nature are not a matter for contract.

For the depositions for presentation as evidence, certificates of existence, certificates of the legality of signatures, and legalizations of notaries they shall keep an indexed folioed book, on the first page of which there shall be made an opening memorandum, and at the end of the same another closing memorandum, both authenticated with the full signature of the notary himself. These books, which shall be similar to those of the protocol, and the entries of which shall be made in brief, always in proper order, one line following the other, being authenticated with the surname of the notary, shall contain from 100 to 200 folios of stamped official paper, and no matter in what year begun it shall not be necessary to open a new book until the previous one is completely filled. They shall be numbered in each notarial office as the new books are begun, the same formalities being observed in each of them.

Notarial instruments issued at the instance of a party shall be signed by the person interested and by the notary, the latter also marking; and if any of the former does not know how, can not, or does not wish to sign, this fact shall be stated. These instruments shall be drafted like original instruments in the current protocol; they shall be included in the same manner in the monthly indices, and there shall be issued to the persons interested, marked, signed, and rubricated, as many copies as they may request, without stating their character of first, second, etc., and on the same kind of paper as depositions for presentation as evidence.

Besides the copies aforementioned, notaries may also certify documents for presentation as evidence, documents written in Latin or in any other language; but in the latter case it shall be understood that their certification refers only to the correctness of the material copy of the words and not to its contents.

ART. 91. Notaries may receive in deposit the documents, bonds, and sums of money which private persons or corporations may entrust to them, either as a pledge for their contracts or for safe-keeping.

The admission of these deposits is voluntary, and the notary may impose conditions upon the depositor, which shall be stated in the receipt or document of preservation issued by the notary.

ART. 92. In cases in which petty governors authenticate public instruments in accordance with the privilege granted them by article 7 of the law, they must adhere in their form and execution to the pro-

visions of the law and these regulations, collecting one-third of the schedule fees and forwarding said instruments to the notaries, who shall charge all the fees due them as if they had certified them in person.

If the instruments have not been drafted in due form, the notaries shall return them to the petty governors in order that they may correct the defects observed by the former, indicating what they may be.

TITLE IX.

EXECUTION OF WILLS DURING EPIDEMICS.

ART. 93. All notaries must speedily comply with requests which may be made of them in the name of persons competent to bequeath, who, being sick, may wish to execute a will, for which purpose they shall go to the domicile or place in which the latter may be, provided it is not more than 22 kilometers from the residence of the notary, in order to hear the statement of his last will, being permitted to request the assistance of the authority or of his agents when he considers it necessary for the discharge of his duties.

ART. 94. The notaries and petty governors (gobernadorcillos) can not excuse themselves from complying with this obligation imposed upon them by the laws, except for well-known physical incapacity, duly proven.

ART. 95. In order to facilitate this service in towns where there is more than one notarial office, at the time of an epidemic, there shall be constantly at the service of the public one or two notaries in the office of the inferior court or of the notarial association. The board of administration or the judge of first instance, where there is no notarial association, shall establish for this purpose a strict succession between those of the city and give the proper information to the public.

ART. 96. If after having arrived at the place where the sick person who is to execute a will is situated, said official can not authenticate it because he is not acquainted with the testator and there are no witnesses of identification, or for other legal reasons, with the exception of the well-known incapacity of the testator, the notary called upon must prepare the proper document before the greatest possible number of witnesses, taking care that there are present at least the number fixed by law, in order to procure the validity of open wills at which a notary is not present.

ART. 97. In the document there shall be stated as briefly and clearly as possible the following circumstances:

1. Name, age, status (whether married or single), domicile, and residence of the testator and of the witnesses.

2. The institution of an heir or the disposition of the property made by the testator.

3. The appointment of executors and of a guardian, in a proper case.

4. The other declarations and provisions expressed or ordered by the testator to be fulfilled after his death.

For this instrument the notary shall earn the fees which, according to the schedule, he would have received for the testamentary instrument if it could have been executed.

ART. 98. Should there not be a notary in the town, or should he not answer with the necessary promptness to the call made, and it being impossible to make use of other legal means to execute the will with the urgency required by the case, the said document must be drafted by the petty governor (gobernadorcillo), or by the justice of the peace if the former should not be able to do so, after a verbal request of any relative or friend of the testator.

The said petty governors or justices of the peace, in a proper case, shall receive for drafting the document one-third of the fees mentioned in the foregoing number.

ART. 99. The notaries, as well as the petty governors or justices of the peace, shall be witnesses to these wills, provided it is necessary in order to complete the number fixed by law.

ART. 100. After the document has been drafted the notary, the petty governor, or the justice of the peace who may have drafted the same shall preserve it in his power until he receives notice of the death of the testator, after which he shall present it to the competent judge for the purposes prescribed in book 3, title 6, of the law of civil procedure.

If he recovers his health the testator may demand the document of the official in whose hands it is, who shall deliver it and take a receipt therefor before two of the witnesses who authenticated the same, or, in their absence, before two others who are residents of the locality.

ART. 101. The boards of the associations and the presiding judges of the audiencias shall adopt the proper measures at the time of epidemics in order to fully comply with the foregoing articles.

ART. 102. Noncompliance or delay in the fulfillment of the foregoing provisions on the part of notaries shall be disciplinarily corrected or shall give rise to the institution of the proper proceedings for the forced transfer referred to in article 31 of the regulations.

ART. 103. The judges of first instance shall see that the petty governors and justices of the peace comply with the prescriptions of the foregoing articles with the greatest zeal and promptness, recommending or adopting personally the measures which they may consider conducive to reward the persons who distinguish themselves in this service or to correct those who appear careless or tardy.

TITLE X.

STATISTICS.

ART. 104. Notaries shall keep a book in which to enter daily the number of instruments or contracts authenticated in their office, folios which they contain, their classes, the amount of capital involved in the same, the value of the stamped paper used in the protocol as well as in

the copies thereof, the fees earned for any of the purposes mentioned in the schedules, with a statement of the amount, and the individual or corporation from whom it is received, and the number of the instrument when proper.

In case the fees have been occasioned by a judicial mandate or by an order from an administrative authority, they shall state this circumstance, with the date of the mandate or order, the judge, court, or authority which issued the same and question which gave rise thereto.

ART. 105. At the end of each year they shall make, in accordance with the data contained in the said book and the form which accompanies these regulations, a statement in which said data is grouped, classifying the contracts in the manner designated in said form.

The lack of any of the data required by the forms, as well as any detail relating to the statistical service, shall be concisely and clearly entered in the column for remarks, for the decision and effects which may be proper.

At the foot of each statement there shall appear the date on which it was made up, and the notary shall affix his signature and the seal of the notarial office thereto.

ART. 106. In the first month of each year notaries shall forward a copy of said statement to the presiding judge of the audiencia of the territory and another one to the dean of the respective notarial association, the original being filed in the proper package.

The deans, after examining the statements forwarded by all the notaries of their territory, and having found them correct, shall transmit them to the general direction of grace and justice of the colonial department within the first three months of each year, with the remarks they may deem proper.

ART. 107. Notaries shall be liable for the errors or omissions which appear in the said book and in the statements, which shall be considered as included, according to their respective importance, in articles 31 and 141 of these regulations, without prejudice to the other liabilities which they may incur for this reason.

All favorable or unfavorable mention arising from the statistical service shall be noted in the personal record of the respective notary.

TITLE XI

ARCHIVES OF PROTOCOLS.

ART. 108. There shall be general archives of protocols in the districts which have more than one notarial office.

ART. 109. Said archives shall be made up with the general protocols more than thirty years old and with the special ones and the books treated of in articles 34 and 35 of the law, which cover the same period since they were closed.

The other protocols and books shall make up the archives of the notarial office in charge of the notary who fills the same.

From the provisions of the first paragraph of this article are excepted cases in which the notary who authenticated them is still living, who shall keep during his lifetime all the protocols which he may have authenticated.

ART. 110. A notary of the same district shall be in charge of the general archives of protocols, appointed by the colonial department, on the recommendation of the general direction of grace and justice, from among those who reside in the town where the archives are situated.

The substitute of the notary shall in a proper case be the substitute of the archivist.

ART. 111. Upon receiving the order of appointment, the notary-archivist shall remain in possession, and shall be entitled to have the books and papers of the archives delivered to him according to an inventory, making a memorandum, the original of which shall remain in the same, copies being forwarded to the inferior court, the board of the notarial association, and to the presiding judge of the audiencia.

The inventories of the archives shall contain a statement of all the papers of the same, and with regard to the protocols they shall state their number, folios of each volume, notaries who authenticated them, and years to which they correspond.

ART. 112. The notary-archivists shall be corrected, suspended, or discharged from office for the same reasons and in the manner in which notaries can be.

ART. 113. Notaries shall punctually deliver to the general archives of the district to which they belong the protocol or protocols and books which they are obliged to deposit there every year. Should they not do so, they shall be disciplinarily corrected, according to the circumstances of each case, by the board of directors or by the general direction.

ART. 114. The general archives shall be subject to the inspection and surveillance of the boards of directors of the notarial associations, of the audiencias of the territory, and of the general direction of grace and justice of the colonial department, which may order all the inspections which it may deem proper and disciplinarily correct, in a proper case, archivists by the imposition of fines not to exceed 500 pesetas.

ART. 115. No person who is not a notary can be in charge of archives of protocols.

ART. 116. In case a protocol is destroyed, totally or in part, besides the obligations of article 39 of the law, a notary shall be obliged to inform the board of directors of the association and the presiding judge of the audiencia, and the latter shall report to the direction. If the notary interested can not comply with the prescriptions of the said article of the law and of the present one, any other notary of the same residence who receives information of the act shall do so. Should there not be another one, the judge of first instance, and, in a proper case, the justice of the peace, shall be under this obligation.

TITLE XII.

INSPECTIONS AND VISITS TO NOTARIAL OFFICES.

ART. 117. When the presiding judge of the audiencia is to appoint from among several judges of first instance or justices of the peace, in the absence of the former in accordance with article 44 of the law, the one who is to be entrusted with the inspection and surveillance of a notarial office in a town where there is more than one court of first instance, or to appoint an associate justice or a judge to make an extraordinary inspection in the seat of the audiencia or outside thereof, he shall make the delegation in writing, communicating it to the notary and to the person appointed. In the same manner a judge of first instance, or in his default a justice of the peace of the subdistrict in which the notarial office is situated, may be appointed to make an extraordinary inspection.

ART. 118. For the inspection of and visit to notarial offices, the presiding judge of the audiencia shall communicate in writing to the delegates the instructions he may deem convenient and which the former shall faithfully carry out, being otherwise liable for any omission or error in their fulfillment.

ART. 119. The half-yearly inspection of notarial offices shall take place by the delegate for the inspection establishing himself in the notarial office, accompanied by the recording clerk or secretary of the court if it is in a town where there is only one, and by the secretary appointed by the presiding judge if the inspection is of a notarial office of the capital or of a town where there is more than one, at hours which are not the ones fixed in each office for the public service. The delegate shall examine all the protocols and books which the notary keeps and the condition of the archives of protocols, if he is in charge thereof.

The minutes of the inspection shall include—

1. The number of instruments and memoranda authenticated during the half year.

2. If there are any words corrected, erased, or interlined in the documents from the date of the last inspection.

3. Any omission or error in form or external defect noticed by the delegate in the books, documents, or office of the notary.

4. If the book of statistics is kept up to date and in the manner prescribed.

If before concluding the inspection the office hours begin, it shall be suspended for the time of the duration of the same, in order to continue it afterwards or on the following day.

After the minutes have been made, they shall be signed by the delegate, the secretary, and the notary, and the former shall forward them to the presiding judge of the audiencia within the six days following the one on which the inspection concluded.

ART. 120. In ordering an extraordinary inspection there shall be stated whether it is to be a general or special one, stating in the first

case the period of time it is to cover, and in the second the instruments, protocols, and books which are to be examined.

ART. 121. After the delegate has arrived in the town in which the notarial office is situated, he shall inform the notary thereof, in order that the latter may be in his office on the day and hour which the former may fix for beginning the inspection, taking care that it takes place outside of the hours fixed for the public service.

If the person in charge of the notarial office refuses to exhibit the protocols and books or is not present during the hours fixed for the inspection, the delegate shall make a memorandum of this fact and shall inform the presiding judge of the audiencia thereof for the decision which may be proper.

When the inspection can not be terminated on the same day, the proper memorandum shall be made corresponding to what was done on the same, which shall be signed by the delegate, the notary, and the secretary.

ART. 122. No matter what defects or informalities are observed by the delegate, they shall be entered in the minutes without directing any remark nor formulating any charge against the notary, without prejudice to requiring from the latter the explanations necessary for greater elucidation of the facts entered.

ART. 123. If, after the memorandum of inspection has been made, the notary denies some of the facts mentioned therein, he shall write in his own hand, immediately thereafter, his reasons for the same, signing at the foot thereof.

ART. 124. All those who subscribe the minutes shall be liable, in accordance to the laws, for the correctness of the facts contained in the same, affirmed as well as denied.

ART. 125. The presiding judge of the audiencia shall examine the memoranda, and when he observes any irregularities or difficulties, which the legislation in force may cause in a notarial office on account of the circumstances of the different localities, he shall make a report to the direction, with his reasons, in order that the latter may recommend to the colonial secretary the proper reforms.

ART. 126. The delegate shall examine also the indices of the general and secret protocols, and shall state whether they are kept in the manner prescribed by these regulations.

ART. 127. If during the inspection any errors, informalities or frauds committed in the notarial office are denounced to the official who is making the same, the delegate shall examine what truth there may be therein, in order to enter it in the minutes.

ART. 128. Notaries may demand and keep a copy of the minutes of the inspection, compared and authenticated by the secretary who is present at the same.

ART. 129. The presiding judge shall examine the minutes of inspections, and shall return those which have not been made in the manner

prescribed, for correction. When any errors or irregularities appear to have been committed in a notarial office, he shall make the rulings which he may deem proper.

Said minutes shall be kept in the secretary's office of the audiencia.

ART. 130. The reports which presiding judges must send every year to the general direction of grace and justice of the colonial department, in accordance with article 48 of the law, shall include the same details as those prescribed for minutes of inspections, with regard to all the notarial offices of this territory. At the same time they shall state the information they may have acquired with regard to the conduct of the notaries and the zeal and capacity they demonstrate in the discharge of their office.

The general direction of grace and justice, in view of the said reports, shall decide what may be proper and shall make the corresponding entries in the personal records of each notary.

ART. 131. Besides the authorities designated in articles 45 and 46 of the law, to make ordinary or extraordinary inspections of protocols, the authorities of the public treasury may order special inspections of notarial offices, but only with regard to the legal use of stamped paper.

ART. 132. The boards of directors of the notarial associations may also make visits of inspection of the notarial offices of said association through one of the members thereof, or charge one or more of the notaries of the territory to do so, in order to correct the defects or errors capable of correction in the manner of writing and keeping the instruments and protocols and to uniform practice, assuring themselves of the exact compliance with the notarial obligations in the entire territory, the board imposing the corrections which it may deem proper and which are within its powers.

ART. 133. The consultations of the notaries submitted to the presiding judge of the audiencia or to the board of directors of the notarial association, shall always be made in writing, and shall be limited, in accordance with article 51, to the doubts they may have with regard to the interpretation and execution of the same and of the regulations issued for its application.

Other doubts and questions relating to the execution of public instruments must be decided by the notaries themselves under their liability.

ART. 134. The presiding judges of audiencias shall report to the general direction of grace and justice of the colonial department all consultations which they may decide regarding the interpretation and application of the notarial law and of its regulations, and of those in which they approve the decision of the board of directors of the association, for which purpose the latter must give them the proper information, no decision of any consultation being carried out until definitely approved by the direction.

TITLE XIII.

ORGANIZATION AND DISCIPLINE OF NOTARIES AND ADMINISTRATIVE CORRECTIONS.

ART. 135. There shall be a notarial association in Manila, and, until another association is established in Cebú, the presiding judge of the audiencia of the latter town shall exercise the duties which, according to the law and these regulations, appertain to the board of directors.

ART. 136. The association shall be governed by a board of directors, which shall be composed of a dean, who shall be the president thereof,

Two censors,

One treasurer,

One secretary.

The dean shall be substituted by the first censor, the treasurer by a censor, and the secretary by a censor or by the treasurer.

As members thereof there may be elected notaries who do not reside in the capital; but only two of other residences may be elected, and only for offices of censor or treasurer.

Notaries who do not reside in the seat of the association who are elected for the board of directors, can only betake themselves to the capital to discharge the duties proper to the offices conferred upon them, making use of the privilege granted them by article 35 of the regulations or previously obtaining, in accordance with the same, the leave of absence they may require.

ART. 137. The offices for the board of directors shall be elective by a majority of votes among the notaries of the said association; they shall also be gratuitous, honorary, and, furthermore, obligatory for notaries who do not exceed 60 years of age.

The renewal shall be partial and shall take place every three years. The first time the three members of the board of directors selected by lot shall discontinue in office, and in the subsequent renewals, the two oldest in seniority and another one also selected by lot.

These drawings shall be held by the said boards before the 15th of November of the year in which the renewal of offices is to take place, there being stated in the corresponding call for the elections, which shall be published in the *Gaceta de Manila*, and especially sent to each notary, the names of the retiring members and the offices which are vacant and which are to be renewed.

The elections shall take place in the first fifteen days of the month of December, and the persons elect shall take possession on the 1st of the following January.

If in an extraordinary case an election for a certain office is proper, it shall be held within the thirty days after the vacancy occurred.

Notaries who do not reside in the capital may forward their vote in a sealed envelope.

ART. 138. The notarial association may hold general meetings in the

capital of the territory for all questions of interest to the class or to the exercise of the profession, after a call of the board of directors of the association, provided they consider it opportune or proper; but in all cases they shall inform the presiding judge of the audiencia thereof. The general meeting shall be presided over by the board of directors, unless the presiding judge of the audiencia delegates a person to preside over the same.

The sessions of the general meeting can not last more than four days.

Notaries who can not be present in person at these meetings may send their vote, written and sealed, or delegate their powers to any of those who are present.

ART. 139. The notarial association may make its special regulations and those for its mutual benefit societies, accepted at a general meeting called for the purpose, submitting them for the approval of the general direction of grace and justice of the colonial department.

ART. 140. Notaries in their disciplinary organization shall be under the jurisdiction of the boards of directors of the associations, the presiding judges of the respective audiencias, and the general direction of grace and justice of the colonial department.

ART. 141. For offenses against discipline and others which might affect the decorum of the profession, the boards of directors may warn notaries, reprimand them in writing, and fine them administratively up to 50 pesos. In cases of repetitions, they shall report to the audiencias, who may impose fines up to 100 pesos, besides reporting the same to the general direction of grace and justice of the colonial department, in order that a memorandum may be made in the respective records of the notaries, all without prejudice to whatever may furthermore be proper in justice, and reserving also any other disciplinary powers of judges and audiencias.

As a coercive measure the general direction may impose fines up to 200 pesos.

From the decisions of boards there shall be no other remedy than a complaint or appeal to the general direction.

ART. 142. The fines which may be imposed by boards shall be collected by the same, and if they should not be paid and it shall be necessary to make use of other proceedings, they shall be collected by the judges of first instance or justices of the peace at the instance of the former.

The boards of directors shall also carry out the application of the disciplinary corrections which, in a proper case, may have been imposed upon notaries by the general direction of grace and justice.

ART. 143. Besides the powers granted boards of directors by the foregoing article they shall have the following:

1. To communicate officially with the general direction.

2. To communicate in a similar manner with the boards of other associations in all matters relating to the service.

3. To prevent and compose differences which may arise between notaries by reason of their office.

4. To make up the annual budget of the administrative expenses of the association, assessing each one of the members for the quota they are to contribute to the same, and which shall not exceed, in one or more annual payments, the following amounts:

For a notary residing in Manila, 30 pesos.

For a notary residing in the capital of a province, 20 pesos.

For other notaries, 10 pesos.

5. To print, distribute, and collect the amounts due for seals for legalizations, requiring the notaries to render an account thereof.

The cost of the legalizations shall be represented by the seal of the association, which shall be issued to the public by the notaries themselves in separate loose copies cut from stub books bound in alphabetical order and strictly numbered. The value thereof shall be the one fixed in the schedule.

6. To collect and disburse the funds of the association for the general or special expenses of the same.

7. To make and keep personal records of each licensed notary with a memorandum of his vicissitudes, merits, and services, and of the disciplinary corrections and penalties imposed upon him by the said boards or by courts, for which purpose the latter shall address the proper communications to the dean.

The other powers of boards and of each one of its members, for the fulfillment of their offices in all that relates to the law and to these regulations, shall be designated in the statutes or special regulations which may be adopted for the interior administration of the associations at a general meeting, with the approval of the direction.

ART. 144. The cash fund of the association shall be composed of—

1. The assessments made on notaries in accordance with the regulations.

2. The amount of the seals for legalizations.

3. The part of the schedule fees which the notaries agree on at a general meeting of the association by a majority of votes.

TITLE XIV.

HONORS AND PREROGATIVES OF NOTARIES AND OF BOARDS OF DIRECTORS OF NOTARIAL ASSOCIATIONS.

ART. 145. Notaries who have become incapacitated and those who have discharged a notarial office with a good record for a period of twenty-five years, and resign therefrom, may request and obtain from the general direction, after a report from the board of directors of the respective association, the title of honorary notary with all the powers corresponding to the other notaries for the internal administration of the associations, including that of filling offices in the board.

ART. 146. All licensed notaries are authorized to use, as the official insignia of their public office, an oval gold medal 19 millimeters from end to end, and 15 wide, with a white thread surrounding it, containing on the obverse a closed protocol book surrounded by two olive branches with the following motto around it: *Nihil prius fide*, and on the reverse the date of the notarial law. This medal shall be worn on the left side of the chest, hanging from a ribbon, white in the center and red on the edges, in all respects in accordance with the official model.

The members of the boards of directors in official acts in which they take part as such may use said insignia, but of dimensions proportionately increased, hanging from the neck from a ribbon of the same colors.

ART. 147. The simple presentation of this medal, representative of the office, shall be sufficient for authorities and their delegates or employees to assist a notary when he requests it in the fulfillment of the obligations proper to his office.

ART. 148. The boards of directors may use in their communications a seal of the same character as prescribed for medals, with the difference that the motto *Nihil prius fide* shall be placed in the center over the protocol book and "Notarial association of ———" surrounding it.

The seals for the legalizations shall be in accordance with these models.

Notaries may make use of a seal, which they shall affix on documents at the side of the mark, similar to the foregoing ones, the only difference being that the inscription, "Notarial office of ———," (name of the town of residence) shall be placed around it.

ART. 149. The boards of directors of the notarial associations shall enjoy free postal and telegraph service in their official relations with the general direction of the service.

ART. 150. The members of the boards of directors in official acts shall have the title of *Señoría*. The notarial associations that of *Ilustre*.

The dean who is the president of the board of directors shall have the titles and prerogatives of a chief of administration.

GENERAL PROVISION.

ART. 151. All prior provisions in conflict with the present regulations are hereby repealed.

Madrid, April 11, 1890.

Approved by Her Majesty.

BECERRA.

NOTARIAL DEMARCATION OF THE PHILIPPINE ISLANDS.

AUDIENCIA OF MANILA.

NOTARIAL ASSOCIATION OF MANILA.

Notarial district of Manila: Manila, eight notarial offices.
Notarial district of Albay: Albay, one notarial office.
Notarial district of Batangas: Batangas, one notarial office.
Notarial district of Bulacán: Bulacán, one notarial office.
Notarial district of La Laguna: Santa Cruz, one notarial office.
Notarial district of Pampanga: Bacolor, one notarial office.
Notarial district of Pangasinán: Lingayén, one notarial office.
Notarial district of Ilocos Norte: Lavag, one notarial office.
Notarial district of Ilocos Sur: Vigán, one notarial office.
Notarial district of Bataán: Balanga, one notarial office.
Notarial district of Camarines Norte: Daet, one notarial office.
Notarial district of Camarines Sur: Nueva Cáceres, one notarial office.
Notarial district of Mindoro: Calapán, one notarial office.
Notarial district of Nueva Ecija: San Isidro, one notarial office.
Notarial district of Tayabas: Tayabas, one notarial office.
Notarial district of La Unión: San Fernando, one notarial office.
Notarial district of Zambales: Iba, one notarial office.
Notarial district of Abra: Bangued, one notarial office.
Notarial district of the Batanes Islands: Santo Domingo de Basso, one notarial office.
Notarial district of Cagayán: Tuguegarao, one notarial office.
Notarial district of Cavite: Cavite, one notarial office.
Notarial district of Marianas: Agaña, one notarial office.
Notarial district of Neuva Vizcaya: Bayombong, one notarial office.
Notarial district of Tarlac: Tarlac, one notarial office.
Notarial district of Isabela de Luzón: Ilagán, one notarial office.
Total, thirty-two notarial offices.

AUDIENCIA OF CEBÚ.

Notarial district of Cebú: Cebú, one notarial office.
Notarial district of Iloilo: Iloilo, one notarial office.
Notarial district of Antique: San José, one notarial office.
Notarial district of Barotac Viejo: Popotac, one notarial office.
Notarial district of Bohol: Tagbilarán, one notarial office.
Notarial district of Calamianes: Cayo, one notarial office.

Notarial district of Cápiz: Cápiz, one notarial office.
Notarial district of the Negros Islands: Bacolod, one notarial office.
Notarial district of Leyte: Tachebán, one notarial office.
Notarial district of Misamis: Misamis, one notarial office.
Notarial district of Samar: Catbalogán, one notarial office.
Notarial district of Surigao: Surigao, one notarial office.
Notarial district of Zamboanga: Zamboanga, one notarial office.
Total, thirteen notarial offices.
Total number of notarial offices in the Archipelago, forty-five.
Madrid, April 11, 1890.
Approved by Her Majesty.

BECERRA.

FORMS.

FORM IN ACCORDANCE WITH WHICH

NOTARIAL ASSOCIATION OF THE

NOTARIAL OFFICE OF

Index of the original instruments and of the documents included in the protocol which contained in the current protocol

Ordinal number of the instrument in the protocol.	Place and date.	Names of the parties executing the instrument.
Two hundred and sixty-one ..	Manila, June 24	Mr ..... Mr .....
Two hundred and sixty-two..	Manila, June 25.	Mr ..... Mr .....

And not having included in the protocol other instruments than those mentionep

STATIS

Audiencia of ———.
District of ———.

Kinds of instruments and deeds.
1. Instruments of contracts transferring ownership of real estate or of property rights .....
2. Instruments of constitution, acknowledgment, and modification of property rights .....
3. Instruments constituting loans.....
4. Mortgage instruments on rural property.....
5. Mortgage instruments on city property.....
6. Instruments extending obligations .....
7. Instruments of all other classes (inter vivos) .....
I. Total number of instruments in which a consideration or price is involved ....
II. Instruments inter vivos in which no consideration nor price is involved.....
III. Instruments of last wills or causa mortis .....
IV. Memoranda .....
V. Certified copies (number thereof).....
VI. Legalizations (their number).....
Totals.....

MONTHLY INDICES ARE TO BE DRAFTED.

TERRITORY OF———, DISTRICT OF———.

MR. ———, RESIDING AT ———.

during the month of ———, *of the year of* ———, *have been authenticated and which are of this notarial office.*

Names of the attesting and identification witnesses.	Purposes of the instrument.
Mr. ——— (witness of identification)	Sale of a house in ———, to———.
Mr.....	
Mr. ——— (attesting witness)	Do. of a plantation in———, to ———.
Mr.....	

in this statement, I sign it in Manila on —— of ———.

(Signature of the notary.)

TICS.

Year of ———.
Public notarial office of ———.

Number of public instruments authenticated.	Number of folios of which the protocol consists.	Principal involved in the contracts.	Amount of stamped paper used in the same.	Fees earned by the notary.	Remarks.

Manila, the ——— of ———.

The Notary.

APPENDICES.

APPENDIX I.

Decree of September 16, 1874, repealing the Royal Cédula of January 30, 1855, with reference to the alienation of offices conferred for one life only in the Philippine Islands, fixing the manner in which they are to be filled hereafter and creating ten notarial offices in addition to the ones existing at the present time.

Mr. PRESIDENT: The institution of public certification as a depository of social engagements and obligations has been given by science an indisputable importance which the undersigned Secretary is pleased to acknowledge and proclaim. But that importance is not sufficient to make the immediate application of organic laws possible, the object of which is to regulate and elevate the said institution in a country where it can be said it does not exist, nor less to establish a complete organization in a place where the notarial corps is considered such.

Every radical reform, far from being improvised and imposed by the force of law only, must find its basis in the customs and its firmest support in the means of making it possible and adequate.

Therefore, Your Excellency, the causes which, without any doubt whatsoever, compelled the Government not to extend the notarial law of October 29, 1873, to the Philippine Islands, issued for those of Cuba and Porto Rico, in the preamble of which the then secretary of the department acknowledges that the different conditions of the colonies, their distinct history and constitution, their different customs and legislation, required special measures contrary to one uniform and common system, which, if practicable in the Antilles, would not be so in the Philippines.

It is known that in these important islands there still exist with regard to public certification, and as the only means to reach the same, the old alienated offices conferred by the Crown, with all their odious attributes, offices which there, as well as in the Peninsula, noninterrupted custom matched in the use of landed property, making them the object of annuities (censos) and mortgages at the will and patience of the legislator.

And if this in itself gives a clear idea of the legal capacity and the confidence which depositories of public certifications in the Philippines may inspire, even a more complete and compendious one with regard to the status of property, of the resources, means, and manner of transacting business, is given by the remarkable fact that for so vast an area as that of the Peninsula and for nearly seven millions of inhabitants, there exist only twenty-three public clerks who can issue extrajudicial certifications, who have their fixed residence, with the exception of the capital, in eighteen of the thirty-three inferior courts in which the islands are divided. Notwithstanding this statistical data, authorized reports permit the assurance that even within the number cited only one-half acts in the clerical branch with success and means of subsist-

ence, or, as a more eloquent demonstration, one-fifth of those who act as notaries in Madrid only.

If the information asseverated, if the notarial orphanage in which half of the archipelago tranquilly lives, denounce in an evident manner not only the inopportuneness and scientific inconvenience, but also the material impossibility of introducing there an organic notarial law without first creating those causes which, affecting ownership and the transaction of business, necessitate first the existence of the institution, and then the coexistence and possibility of the notarial corps immediately and later its organism, they also show the disgraceful reign, the antiquity of which urgently demands provisions which in cardinally altering an observance of centuries opens the door to the general establishment at the proper time of the notarial reforms in force in the Peninsula.

And although it is sad to confess it, one of the foundations on which said lack is based, especially in those provinces the wealth of which is well known and whose relations with the capital place them higher than those located in the interior of the archipelago, there is no doubt of the scientific distrust that said officials inspire; the well-known lack of formality which occurs in all acts in which contracts are executed and legalized, and the natural fear, finally, which is entertained by all who, having necessity of executing public instruments, do not see or acknowledge in the official who is to authorize them the invulnerable guaranties which a person intrusted by law to the sacred office of notarial certification in invested.

The undersigned secretary, who sees in this point two important questions, which are the social and the political in their respective relations to property, and, on the other hand, always respecting acquired rights, is certain that at the present time ten more notaries can live in the Philippines by the legitimate income of their honorable profession, provided they respond to the relative requirements of progress and to the necessities inherent to their worthy office, it is suggested not only to abolish the ancient system of alienated public offices, but also to combat with the Peninsular element in favor of salutary reforms.

And in order that the latter may be attained, partly through the just increase advised and partly through the undoubtable intelligence which certain officials must possess, as it is not possible to acquire it where there exist means to administer the same, the undersigned secretary, reserving the right to furnish them as soon as possible, has the honor to submit for the approval of Your Excellency the following project of a decree.

Madrid, September 16, 1874.

ANTONIO ROMERO ORTIZ,
Secretary for the Colonies.

DECREE.

In accordance with the suggestion of the secretary for the colonies, and in accordance with the council of secretaries,

I decree the following:

ARTICLE 1. The power granted the State by virtue of the royal cédula of January 30, 1855, relating to the alienation of offices for one life only, is hereby repealed and abolished in the Philippines from the date of the publication of this decree in the *Gaeeta de Manila.*

The rights acquired up to that time shall enjoy the benefits accorded them by the laws of the country and the proceedings which are being held with relation to the same, or which may hereafter be instituted, shall be decided in accordance with the provisions in force on the subject until the Government orders what may be necessary for the reversion to the State.

ART. 2. All the offices which may hereafter, either newly created or by natural vacancy, correspond to the unrestrained appointment of the Government shall be filled in the following manner:

The offices of *Procuradores* of inferior courts by the audiencia of Manila, on the recommendation in ternary of the respective judges.

The offices of *Procuradores* of the audiencia by the department of the colonies, on the recommendation in ternary of the same court.

The clerkships of chambers and *Relatorias*, after the vacancy has been made known, freely by the government of individuals of age, of good conduct, and who are lawyers.

The notarial offices and public clerkships, by competitive examination, and by the colonial department in the manner prescribed by article 7 of this decree.

ART. 3. There are hereby created in the Philippines ten notarial offices in addition to those existing, and the officials filling the same shall have their permanent residence, two in the capital, and one in each of the following places: Pasi, Albay, Pampanga, Bulacán, Pangasinan, Cagayan with Isabela, Cebú, and Iloilo.

ART. 4. By notary, for the purposes of the preceding article, there shall be understood the public official authorized to certify, in accordance with the laws of the country, contracts and other extrajudicial instruments.

ART. 5. Notwithstanding the provisions of the preceding article, said notaries, in exceptional cases and by express delegation from the audiencia, may take part in judicial matters which the said court, on account of necessity or other very urgent reasons, considers it necessary to intrust to them within the inferior court of their respective residences.

ART. 6. The foregoing concession, as an exceptional one, as well as the one referring to the residence and demarcation, shall not interfere in a proper case with the provisions of the Government in subsequent reforms.

ART. 7. The said ten offices of notaries shall be filled by competitive examination in Madrid and by the colonial department with Spaniards of age, of good habits, who do not have any permanent physical impediment for the due discharge of their duties, and who are lawyers or have passed the academical studies and complied with the other requisites prescribed by the laws and regulations of the Peninsula for the notarial career.

ART. 8. All the details mentioned must be proven in order to take part in the competitive examinations.

ART. 9. The colonial department shall issue the proper provisions for the fulfillment of the present decree.

Given at Madrid on September 16, 1874.

FRANCISCO SERRANO.

ANTONIO ROMERO RUIZ,
Secretary for the Colonies.

The decree of May 29, 1885, provisionally organizing the personnel of the auxiliary officers of the administration of justice in the courts of first instance of the Philippine Islands, is a complement to the foregoing one.

It is as follows:

SIR: The Government of His Majesty has for some time been paying special attention to the important reforms required, not only by the territory of the Antilles, but also by the growing development and culture of the Philippine Archipelago; and, as in all the branches of the administration there are being introduced those which a full and mature examination show are advisable and easily established, more than any other in that of justice, it is necessary to introduce in the said Archipelago new legislation, which slowly and without confusion will reform the raison d'être and the organization and procedure of said courts.

For this purpose several reforms will soon have to be established concerning civil and criminal procedure, the penal code, and subsequently others required by the social status of the Philippine Islands.

But for an easy and perfect establishment of such innovations, it being necessary to previously organize, even if only provisionally, the personnel of the auxiliary officers of administration of justice in the courts of first instance, in accordance with the authorized opinion of the codification commission of the colonial provinces, the undersigned secretary has the high honor to submit for the approval of Your Majesty the following project of a decree.

MADRID, *May 29, 1885.*

SIR: At the royal feet of Your Majesty, Manuel Aguirre de Tejada.

ROYAL DECREE.

For a more perfect fulfillment of the law of civil procedure soon to be applied to the Philippine Islands, and until the personnel of the auxiliary officers of the administration of justice in the courts of first instance of said islands is definitely organized, at the suggestion of the colonial secretary,

I decree the following:

ARTICLE 1. In each court of first instance established in the city of Manila, and in all the towns which are seats of districts, there shall be appointed justices of the peace, who shall discharge the jurisdiction and powers assigned them by the laws of civil and criminal procedure.

The appointment of said justices shall be made by the Governor-General, at the suggestion of the president of the audiencia of Manila, and shall be given to persons who are lawyers or who possess some academical or professional degree, and in the absence thereof, who by virtue of their position and circumstances can discharge said office. The exercise thereof shall last two years. In the other towns where the selection of persons possessing any of said qualifications is not possible the office of justices of the peace shall be discharged by the petty governors of the same towns. Justices of the peace who are lawyers shall substitute judges of first instance in cases of vacancies, absence, and sickness, and in such case the Governor-General of the Philippines shall appoint a temporary justice of the peace in accordance with the provisions contained in the foregoing paragraph. Should the justice of the peace not be a lawyer, the temporary substitution of those of first instance shall be made in accordance with the prescriptions in force at the present time on the subject.

ART. 2. In towns where it is not possible to establish immediately justices of the peace, the duties assigned the latter by the law of civil procedure shall be discharged by the petty governors of the same towns.

ART. 3. Justices of the peace and the petty governors, in a proper case, shall discharge their duties before an attending witness, of age, who is at the time in the enjoyment of his civil rights and who knows how to read and write correctly.

ART. 4. The attending witnesses shall discharge the duties of recorders of the courts of justices of the peace, subject to the prescriptions of the law of civil procedure, and shall be appointed by the said justice, or petty governors, being permitted to appoint a different one for each question they take cognizance of.

ART. 5. The justices of the peace and the petty governors when they discharge the duties of the former, as well as recording clerks attending as witnesses, shall earn the fees fixed in the schedule in force at the present time or which may hereafter be adopted.

ART. 6. In the courts of first instance of the Philippine Islands where there are at the present time royal notarial clerks of the Indies by reason of an alienated office, shall continue to discharge the duties of recording clerks of said courts until the application of the notarial law to the same and the reincorporation of said offices into the State.

ART. 7. In the same manner the notaries public created by a decree of the supreme Government of September 16, 1874, shall for the present continue to act as recording clerks in the inferior courts of their residence, with the exception of those whose fixed residence has been assigned to the city of Manila.

ART. 8. Until the said notarial offices are filled in due form, as well as the other offices which may be required in each court of first instance, the presiding judge of the audiencia shall appoint temporary substitutes to fill the same, being obliged to give the appointments to persons who have passed the notarial career in the University of Manila or in any other one of the Kingdom, or in the absence of the same to persons having the greatest possible qualifications to fill them.

ART. 9. Where there are no royal clerks or notaries public, and where it is not possible to appoint the temporary substitutes referred to in the foregoing article, they shall be substituted, in so far as the public certification is concerned, by attending witnesses, in accordance with the laws and provisions in force at the present time.

ART. 10. In all courts of first instance, and in the towns of the subdistrict where it is possible, there shall be established the number of solicitors which may be considered necessary for the transaction of judicial business. Where there are solicitors who hold their position by reason of an alienated office, they shall continue filling the same until the reincorporation of said offices into the State.

ART. 11. The number of solicitors in each inferior court or town shall be fixed by the presiding judge of the audiencia of Manila in due proportion to the requirements of the service.

ART. 12. In order to be a solicitor of a court it is necessary: (1) To be a Spaniard, over 25 years of age, and residing in the Philippine Islands. As Spaniards shall be considered all persons who are considered such according to the constitution of the Monarchy; (2) to be in the full enjoyment of civil rights; (3) to have been approved, after an examination, for the discharge of the office; (4) to give the proper guaranty.

ART. 13. The programme of said examination shall be determined by the chamber of administration of the audiencia of Manila. The exercises shall take place before a board, to be composed of one associate justice as president, appointed by the presiding judge of the audiencia; of one professor of law of the University of Manila, appointed by the

rector, and of a solicitor, appointed by the presiding judge of the audiencia, and who shall furthermore discharge the duties of secretary.

ART. 14. Whenever the office of solicitor of a court is to be filled, the presiding judge of the audiencia shall make the proper call by means of edicts, publishing immediately thereafter the appointment of the board and the programme for the examination.

In the same edict he shall fix the amount of the guaranty which may be considered sufficient, according to the circumstances of the respective localities.

ART. 15. The appointments of solicitors of courts shall be made by the presiding judge of the audiencia of Manila, according to the order of classification of the candidates approved by the board of examiners, and they shall take the proper oath before the said presiding judge, after the corresponding diploma has been issued to them, without charge.

The judges of first instance or the dean, where there is more than one, shall install the solicitors appointed, after presentation of the diploma and of the document showing that they have given the required guaranty.

ART. 16. In the seats and towns of judicial subdistricts where there are no solicitors, the judge of first instance shall forward to the presiding judge of the audiencia a list of the persons who, being residents of the said towns, of age, in the enjoyment of their civil rights, and who know how to read and write correctly, have the greatest possible qualifications for the discharge of the office.

ART. 17. The presiding judge of the audiencia shall appoint, from among those included in said list, the number that may be necessary for the service of the respective court or town, and shall forward to them, without charging any fees, an appointment as substitute solicitors.

No guaranties shall be required of the substitute solicitors.

ART. 18. The regular and substitute solicitors who are appointed by virtue of the provisions of this decree may discharge their duties indiscriminately in all the inferior and superior courts of the district, and shall collect their fees in accordance with the schedule in force or which may hereafter become operative.

ART. 19. The presiding judge of the audiencia of Manila shall at once adopt the proper measures in order that the provisions of this decree may be fulfilled as speedily as possible, and shall thereupon report the same to the colonial department.

Given at the Palace on May 29, 1885.

ALFONSO.

MANUEL AGUIRRE DE TEJADA,
Colonial Secretary.

APPENDIX II.

Royal decree of November 14, 1885, creating a registry for last wills and testaments.

SIR: The honorable jurists who drafted the original mortgage law, respecting the general principle that instruments not recorded should not prejudice third persons, so stated it in an absolute manner in article 23, with the object of securing the development of land credit, and even at the risk of injuring, in certain cases, the most just rights.

The difficulty of its establishment and the work entailed by its practical application were consequences of the radicalism of such a prescription, suspensions and extensions to declare it in force having taken place, and the necessity to except from said general principle the record of instruments of inheritance or legacies is acknowledged through "the impossibility to legally prove that a will which is presented as a title to secure a record is not repealed by a prior one, drafted with a clause of annulment, having been revoked by the testator;" and the modification of article 23 of the law of 1869 was founded thereon, it being complemented by the paragraph establishing that the record of property acquired by inheritance or legacy does not prejudice a third person until after five years from the date of the record have passed.

The right of persons who were really entitled to an inheritance was, by said addition, protected, but not without detriment to land credit, as during said period a record could not inspire the confidence necessary to attract capital to real estate acquired by inheritance.

This gave rise to a third paragraph being added to the same article by a law of July 17, 1877, and according to which the record of property acquired by legal heirs prejudices third persons from its date, should there be a will or not.

Such important changes and repeated vacillations in one of the fundamental bases of the law attracted the attention of the Government of Your Majesty, and the undersigned secretary, desirous of conciliating, in so far as practicable, the development of land credit with the due respect of the said rights, has considered himself able to do something toward this end, although without attempting the legal modification of our mortgage system, by creating a general registry for all last wills executed in Spanish territory, and even abroad before our consular agents.

Being established in a convenient manner, it will give persons who believe that they have a right to, or are in hopes of, an inheritance, a notice of said wills with regard to a certain person; it will avoid that property be recorded by virtue of titles which, although good, should not have any legal efficacy by the said will of the testator; it will lessen the probabilities which exist at the present time of declaring heirs *ab intestato* when there are heirs by will; and, finally, it will give the public who desires to invest capital in real estate acquired by inheritance more sources from which to ascertain, in so far as practicable, what is of greatest interest to it—that is, whether the contract executed with the person who appears to be the owner according to the registry, will be exposed or not to its invalidation within the period of five years.

The project requires that the greatest secrecy regarding wills recorded during the lifetime of the testator be observed, but as soon as his death has been proved the registry is made public, as no prejudice can result from their being made known; the persons interested are obligated, before obtaining a declaration of heirship *ab intestato* or the judicial approval of partitions made by virtue of a will, to present in the proper inferior court a certificate stating the wills which may have been recorded relating to the testator; notaries are prohibited from authenticating instruments of awards or partition if this certificate is not presented to them, and finally, in order that the registry, the creation of which is proposed, may have its principal effect, registers are required to state the contents of the certificate in the record.

In this manner, without introducing any modification whatsoever in the civil law, without attempting to know the will of the testator, without adding formalities to those which are to-day required to validate instruments in which the disposition of property after death is ordered, and without altering the prescriptions of article 23 of the mortgage law, the undersigned secretary believes that third persons will be granted greater security as even during the five years the effects of the record are to be suspended they do not run the risk of being despoiled by heirs having a better right.

And this will not be the only advantage of the project, if it meets with the approval of Your Majesty. The registry once established, judges and courts will have a new source from which to ascertain the existence of last wills, with regard to the falsity of which litigation arises.

The basis and the authorized precedent of this registry are the ones which are kept with beneficial results in various provinces, due to the initiative and zeal of their notarial associations, some of which the undersigned secretary has had occasion to examine personally, this valuable experience causing him to generalize upon the subject. The present reform is nothing more than the beginning of a service which at some future time will require development by legal precepts of greater scope; but it is of importance to establish it immediately, in order that the benefits thereof may accrue and be fully utilized in the definite reforms to which our civil law must be subjected at a period which, depending upon the patriotism of all parties to assist in this national work, is believed to be not far distant.

Based on these considerations, and after having heard the opinion of the chambers of administration of the audiencias, that of the boards of directors of the notarial associations, and that of the board of officers of the registry division, all of which agree to the usefulness of the institution, the undersigned secretary, in accordance with the council of secretaries, has the honor to submit the annexed draft of a decree for the approval of Your Majesty.

Madrid, November 14, 1885.

Sir, at the royal feet of Your Majesty,

FRANCISCO SILVELA.

ROYAL DECREE.

In conformity with the suggestion of the secretary of grace and justice, in accordance with the opinion of the council of secretaries, I decree the following:

ARTICLE 1. From January 1, 1886, there shall be kept a general registry of wills in the general administration of civil registries and those of property and of notaries.

The private registries which shall also be kept in each one of the offices of the deans of the notarial associations of Spain and the colonies, as well as the data furnished by the consular agents abroad, shall serve as a basis for the general registry.

ART. 2. The general registry shall contain—

(*a*) Open or sealed wills, codicils, powers to bequeath, revocations, retractions of the latter, gifts *causa mortis*, declarations of poverty in which property which may be acquired in the future is disposed of, and in general all instruments relative to the expression or modification of last wills in which a notary assists, either of the Peninsula, adjacent islands, or colonies, or a parish priest at places where, according to law, right, or custom he assists as certifier, or a consular agent abroad.

(*b*) The declarations made by judges to the effect that the instruments presented to them for this purpose are wills or the depositions of witnesses in a proper case, and of the decrees issued ordering that testamentary memorials be included in protocols.

(*c*) Final judgments which affect the validity of testaments and other acts of last will.

ART. 3. The general registry, as well as the secret ones, shall be kept on sheets which contain the following printed columns: First, names and surnames of the testators; second, their character; third, residence or domicile; fourth, status (whether married or single); fifth, names and surnames of their parents; sixth, notary or official who authenticated the instrument, or the judge who made the declaration or issued the decree, and the clerk who officiated; seventh, town in which it took place; eighth, date; ninth, character of the last will; tenth, remarks.

ART. 4. The general registry and the private ones of each notarial association shall be secret, under the liability of the personnel in this service in the administration and offices of deans of notarial associations.

Certificates may only be issued in accordance with the contents of the general registry in the following cases: First, when they are requested by judges or superior courts or officials for business of the service; second, when the principals themselves request them, proving their identity; third, when they are requested by any person, if he proves with an authentic document the death of the person of whom it is desired to ascertain whether any last will has been recorded or when said death is already known.

The certificates shall be issued by the chief of the bureau, countersigned by the director on the proper stamped paper, which shall be furnished by the petitioners, who shall pay one peseta for each certificate as fees. These amounts shall be destined to cover the expenses of this service, until they and the income having been ascertained, either may be included in the budgets of the State.

The proper draft of all certificates issued, authenticated with the rubric of the director and surname of the clerk, shall be filed.

ART. 5. Parish priests, judges of first instance, and notaries of the Peninsula, adjacent islands, and the colonies, who in any manner whatsoever take part in the executions or declarations mentioned in article 2, shall direct a communication, within the third day (computed from the date of the execution or declaration), to the dean of the respective notarial association, in which, in separate and numbered paragraphs, the data mentioned in article 3 shall be included. In case all of them can not be stated, they shall state that the ones included are the only ones they have been able to obtain.

The consular agents of Spain abroad shall forward to the general

administration the communication referred to in the preceding paragraph. The administration shall issue printed forms for the communications.

As soon as notaries forward the communication they shall state this fact by means of a memorandum at the margin of the respective instrument, collecting 1 peseta therefor, which must be paid by the party interested. Half of the fees collected by the notaries in this manner shall be credited to the treasury of the respective notarial association, being destined, in so far as necessary, to defray the expenses caused by this new service.

ART. 6. Deans of notarial associations, immediately upon receiving the communications referred to in the preceding article, shall order that the data be entered in the private registry, to be kept in the office of the dean. The private registry of each territory shall be kept according to alphabetical order of surnames, on sheets of common paper containing columns, which shall be bound annually, the manner of conducting this service being in charge of the respective boards.

The administration shall issue to the same the necessary sheets, also of common paper, so that in the proper columns there may be entered, in alphabetical order of surnames, the data contained in the communications, entire sheets being assigned to each letter of the alphabet.

ART. 7. On the 1st and 16th of every month the deans of the notarial associations of the Peninsula and Balaeric Islands shall forward to the direction such sheets which are entirely filled, stating in the communication the number they forward, the number begun, and the entries contained on each one of the latter, with a statement of the letter to which they correspond.

If, on the day the transmission is to be made, there should not be any sheets which have been completely filled, corresponding to one letter, said transmission shall be deferred until the following one, on which day it shall be made, although no sheet has been filled.

The direction shall form the general registry with the sheets which are forwarded by the deans of the notarial associations, and with the data furnished by the consular agents, which must also be contained on full sheets, one for each letter. There shall, moreover, be kept a strict alphabetical index to facilitate the search for entries in the general registry.

The deans of notarial associations of the Canary Islands and the colonies shall forward their sheets every month in the same manner.

Consular agents shall forward the proper communication within the same period of one month.

ART. 8. Whenever a declaration is requested that a person has died *ab intestato*, or the judicial approval of partitions made by virtue of any last will, there shall be presented in the proper court of first instance a certificate of the direction, stating those which appear recorded, or that none made by the testator appears recorded.

The certificate shall be attached to the decrees, and, without prejudice to the judge deciding what he may deem proper, he shall observe in making the declaration of death *ab intestato* or in approving the partitions that the contents of the certificate are entered.

ART. 9. Notaries who are requested to certify to instruments of awards or partitions of property acquired by testate inheritance shall require the persons interested to present to them a certificate of the direction, stating whether there appears recorded or not any other last will of the principal. The certificate shall be attached to the original instrument and shall be included in the copies which may be issued.

ART. 10. Registers of property shall briefly state in the record the property acquired by testate or intestate inheritance, the contents of the certificate of the direction, and shall suspend it for a defect capable of correction, if the latter is not included in the instrument or in the decree of declaration or in the judicial approval.

ART. 11. The general division of registries and notaries shall exercise a general inspection of this service, and shall administratively correct any errors which can be corrected by the officials in charge of the same.

TEMPORARY PROVISION.

The proper rules for the execution of this royal decree by the officials upon whom its fulfillment is incumbent shall be issued by the State, grace and justice, and colonial departments.

Issued at Pardo on November 14, 1885.

ALFONSO.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

APPENDIX III.

Royal decree of December 7, 1888, ordering that all offices issuing judicial or extrajudicial certifications of the Philippine Islands alienated by the Crown, which are vacant and those which are filled by administrators or qualified substitute notaries, be reincorporated into the State immediately and after indemnification.

MADAM: The law of March 3, 1873, placed upon the Government the obligation to immediately proceed with the organization of the notarial offices of the colonial provinces in accordance with the law of May 28, 1862, a precept which was fulfilled for Cuba and Porto Rico on October 29 of said year by means of the promulgation of the notarial law, which has not as yet been extended to the Philippines.

The reform presupposes the existence of other organisms which affect ownership and contracts, as is deduced by the decree of September 16, 1874, which prepared it by abolishing the alienation of offices for one life only, a privilege which the State still preserved by virtue of a royal *cédula* of January 30, 1855, bringing, furthermore, new life into the personnel with the Peninsular element which entered by competitive examination.

This attempt did not give the results which were expected because the new notaries had to fight the inconveniences caused by all reforms, and still more the competition of the old recording clerks who were filling the offices and who had an old protocol and the confidence of the public on account of their long residence in the provinces. Their precarious condition could not be remedied, neither with the faculty granted them to issue judicial certifications, nor by transferring them to towns where it was considered they would have a decorous living, which could only be attained by decreeing the reversion to the Crown of the public alienated offices, and organizing the notarial offices in accordance with principles of justice and general utility, in harmony with the natural attributes of the State, forgotten in olden times.

This is the hope explicitly expressed by the important authorities and corporations of the archipelago, who unanimously report as to the necessity of organizing the notarial offices on a basis of competitive examinations, and to terminate by means of the reversion with the absurd system of considering as a private patrimony the discharge of a public office which requires special conditions to be possessed by the person who is to discharge the duties thereof.

Financial reasons on the one hand which demand that the budget be not at the present time charged with the expenditure of sums the payment of which may be delayed: a certain natural respect for rights which, although their origin may be questioned, were acquired under the protection of a law, and the acknowledged convenience that any reform, no matter how beneficial it may be, must be adopted gradually and little by little if its results are not to be unfortunate, on the other hand, leads the undersigned secretary to believe that the reversion for the present should be limited to the offices which are not filled by their

regular incumbents by leaving them to be rendered vacant in a natural manner.

The establishment of the mortgage law in the Philippines as well as of registries of property being near, it is urgent to appoint notaries to those islands who may satisfy the necessities of the same and accommodate the scientific principles necessary in all cultured societies.

The present decree is an indispensable preparation for this purpose, returning to the state, as it does, its own functions, of which it should not have deprived itself, indemnifying the private parties who made a contract with the state for the disbursements made by them or their legal representatives, and making the application of the Spanish notarial law possible in the Philippine Islands, which, with its well-known advantages, will soon take place.

In view of the foregoing considerations, the undersigned secretary has the honor to submit for the approval of Your Majesty the attached project of a decree:

MADRID, *December 7, 1888.*

MADAM: At the royal feet of Your Majesty, Trinitario Ruíz y Capdepon.

ROYAL DECREE.

At the suggestion of the colonial secretary;

In the name of my august son the King, Don Alfonso XIII, and as Queen Regent of the Realm,

I decree the following:

ART. 1. All the offices issuing judicial and extrajudicial certifications of the Philippine Islands, alienated from the Crown, which are actually vacant, and those which are being filled by administrators or qualified substitute notaries, are hereby at once reincorporated into the state, after indemnification.

ART. 2. In the same manner there shall be understood as having reverted to the state, after indemnification, all offices issuing judicial and extrajudicial certifications of the said islands which may hereafter become vacant by the death or cessation of the regular owners of said offices who are at present filling the same.

ART. 3. The amount of the indemnification shall be paid the owners of the offices included in the case of article 1 of this decree, or to their legal representatives, when requested by the persons interested and the proper proceedings of classification have been instituted and the right to the indemnification for the office in question has been declared.

The amount of the indemnification shall be paid the owners who are actually discharging their offices when the material reincorporation to the State takes place, that is, when the vacancy is at the free disposal of the Government, and after the proceedings of classification and declaration of rights.

ART. 4. The owners of offices authorized to certify alienated or confirmed with the clause of reversion to the Crown for the price of egression or other fixed sum, shall be indemnified in accordance with said clause.

Other owners of alienated offices shall receive by way of indemnification: First, the amount of the last appraisal and confirmation; second, the amount which appears to have been satisfied in addition.

In cases of doubt, the Government shall decide, first hearing the department of the treasury and colonies of the council of state.

ART. 5. From the date of the publication in the Philippines of the notarial law, the exercise of all and each one of the prerogatives which

the ownership of alienated offices authorized to certify carried with it, is prohibited.

ART. 6. The owners of offices of said class which are vacant or filled by administrators or substitute notaries, qualified, or their legal representatives, shall present within the period of six months counted from the date of the publication in the Philippines of the said law, in the offices of the secretaries of the respective audiencias, the documents relating to the right of ownership, nature and character of the office, for the proper classification and declaration of rights.

The documents or titles, the presentation of which is required, are: The last one of the acquisition of ownership in favor of the present person in possession, that of the previous owner, the one showing the payment of the proper taxes and impost, and any others which may serve to justify the validity of the offices, all without prejudice to those which the chambers of administration of the audiencias consider it useful or necessary to demand. The originals of these documents or certified copies thereof may be presented.

ART. 7. In view of the documents presented, the chambers of administration of the audiencias shall make the proper classification of the offices and of the rights of the owners to the same, and shall forward the proceedings to the colonial department for a definite decision within the period of three months counted from the date of the presentation of the suit.

ART. 8. For the payment of the indemnifications referred to in article 1 of this decree there shall be placed to the credit of grace and justice of the next general budgets of the Philippines for the year 1889 the sum of 9,000 pesos, and in the subsequent years there shall be credited the proper amount to pay the indemnifications legally granted in accordance with the previous term for the payment of the offices referred to in article 2 of this decree.

The owners of the said alienated offices who are declared to have a right thereto shall be indemnified from said appropriations, in the order of presentation of their petitions and the proper documents in the offices of the secretaries of the respectives audiencias.

ART. 9. The owners of said offices who do not make use of the privilege granted them by article 6 within the period fixed therein, shall lose all right to indemnification, and the colonial secretary, on the recommendation of the proper chamber of administration, shall decree at the proper time the reincorporation into the State.

ART. 10. The provisions necessary for the execution of this decree shall be issued by the colonial department.

Given at the Palace on December 7, 1888.

MARIA CRISTINA.

TRINITARIO RUÍZ Y CAPDEPON,
Colonial Secretary.

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TRANSLATION

OF THE

GENERAL LAW OF PUBLIC WORKS

OF THE

ISLAND OF CUBA,

AND

REGULATIONS FOR ITS EXECUTION.

WITH THE ADDITION OF ALL SUBSEQUENT PROVISIONS PUBLISHED TO DATE.

(1891.)

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

GENERAL GOVERNMENT OF THE ISLAND OF CUBA,
Office of the Secretary, Department of Public Works.

The Colonial Department, under date of the 19th of last April, communicates to His Excellency, the Governor-General, the following Royal Order:

Considering the reasons submitted to me by the Colonial Secretary, and by virtue of the authorization granted to the Government by Article 89 of the Constitution of the Monarchy, and in conformity with the report of the full Council of State, I have decreed as follows:

ARTICLE 1. In Cuba there shall govern a General Law of Public Works similar to that decreed for the Peninsula on the 13th of April, 1877.

ART. 2. The Colonial Secretary shall draft the regulations for the execution of this law and shall report this decree to the Cortes, which is sent to Your Excellency by Royal Order, accompanying the law with a copy of the Gaceta of Madrid, in which it has been published.

And in compliance with the superior order of Your Excellency, dated the 19th of the present month, it is published, together with said law, for general knowledge, together with the said General Law which extends it to this Island.

Havana, May 30, 1883.

M. DIAZ DE LA QUINTANA,
Secretary of the General Government.

GENERAL LAW OF PUBLIC WORKS FOR THE ISLAND OF CUBA.

[Approved by Royal Decree of this date.]

CHAPTER I.

CLASSIFICATION OF THE WORKS.

ART. 1. Public works for the purposes of this law shall be understood to be those which are of general use or service, and such constructions as are devoted to the service and are in charge of the State, of the Provinces, and of the towns.

In the first group are included roads, ordinary as well as railroads, ports, light-houses, great irrigation canals, navigation canals, and the works necessary to the disposition, use, and police of waters, retention of rivers within their beds, draining of lakes and marshes, and sanitation of lands. And the second group shall include public buildings devoted to service depending on the Colonial Department.

ART. 2. The examination and approval of the projects, supervision of the construction, and preservation of the public works, their police and use, shall always be dependent on the Administration, in whichsoever of its central powers, and on the provincial and municipal Administrations.

ART. 3. Public works, both in relation to their plans and their construction, operation, and preservation, may be charged to the State, to the Province, to Municipalities, or to individuals or companies.

ART. 4. There are in charge of the State:

First. The highroads which are included in the general plan of those which have to be taken care of with general funds.

Second. The work of retaining within their beds and making navigable the principal rivers.

Third. Ports of commerce of general interest, as well as those of refuge, and military ports.

Fourth. Light-houses and buoys.

Fifth. The drainage of great marshes, lakes, and inlets belonging to the State.

Sixth. The construction, preservation, and operation of those railroads of great national interest, which, because of high considerations of government, shall not be turned over to individuals or companies.

Seventh. All other railroads of general interest, in so far as concerns the concession, examination and approval of plans, and superindend-

ence, in order to see that they are constructed and operated in the safest and most proper manner.

Eighth. The construction and preservation of civil buildings necessary to the service of the Administration.

(Article 1 of the Regulations.)

ART. 5. There are in charge of the Province:

First. The roads included in the plan of those which have to be attended to with provincial funds.

Second. The ports within its territory which, not being included in the third paragraph of Article 4, offer greater advantages than those of a given locality.

Third. The sanitation of lakes, marshes, and inundated lands in which the Province is interested and which are not included in the fifth paragraph of said article 4.

Fourth. The construction and preservation of the buildings necessary for the service of the Provincial Administration.

(Article 56 of the Regulations.)

ART. 6. There are in charge of the Municipalities:

First. The construction and preservation of local roads included in the plan of those which have to be taken care of with municipal funds.

Second. The works for supplying water to the towns.

Third. The drainage of lakes and unhealthy lands which are not included in the fifth paragraph of Article 4, nor in the third paragraph of Article 5, and which affect one or more towns.

Fourth. Ports of merely local interest.

Fifth. The construction and preservation of the buildings necessary for the service of the municipal Administration.

Sixth. The works necessary to make and ornament the streets, squares, and boulevards of the towns.

(Article 91 of the Regulations.)

ART. 7. The following may be in charge of individuals or companies, in accordance with the general provisions of this law and the special provisions for each class of works:

First. Highroads and railroads in general.

Second. Ports.

Third. Irrigation and navigation canals.

Fourth. Drainage of lakes and marshes.

Fifth. Sanitation of unhealthy lands.

Sixth. Water supply of towns.

CHAPTER II.

ADMINISTRATION AND ECONOMIC MANAGEMENT OF PUBLIC WORKS.

ART. 8. The following shall be in charge of the Colonial Secretary:

First. All that refers to the plans, construction, preservation, repair, and police of the highroads in charge of the State.

Second. All that concerns the method and form of the constitution of partnerships or companies which may demand concessions of railroads of general interest, the granting of these concessions and privileges corresponding thereto, the examination and approval of the plans, and the service for the inspection which the State shall exercise in the construction, preservation, operation, and police of said railroads.

Third. All that refers to the construction and operation of those railroads of great public interest which, according to paragraph 6 of Article 4, are declared by special laws to be in charge of the State.

Fourth. Irrigation and navigation canals which may also be in charge of the State, in whatever relates to the drafting of plans, to works of construction, preservation, and improvement, and, finally, to the technical part of the distribution of the water and the policing of the navigation.

Fifth. The management and police of public waters, of rivers, torrents, lakes, streams, canals of artificial currents; the works relative to navigation, river navigation, to the defenses of the border of the rivers and lowlands exposed to be swept away or inundated; the draining of public waters, sanitation of marshy lands, and, finally, the technical policing of inland navigation.

Sixth. The works of construction, preservation, and repair of the ports in charge of the State, and the technical policing of the same.

Seventh. The light-houses and all classes of maritime signals and buoys on the coasts.

Eighth. Everything in connection with the construction, building of additions, improvement and preservation of the civil buildings devoted to services dependent on the Colonial Department, and with those constructions which have the character of artistic and historic monuments.

Ninth. The inspection of public works which are in charge of the Provinces or the Municipalities.

(Articles 78, 89, 101, and 120 of the Regulations.)

ART. 9. The Provincial Administration, according to the Organic Law, shall have charge of—

First. The highways, which, according to this Law, are in charge of the Provinces, as well as those which have to be provided for wholly with provincial funds in matters relative to the studies, construction, preservation, repair, and policing of said highroads.

Second. Navigation and irrigation canals declared to be exclusively of provincial interest, the technical part of the distribution of the water, and of the policing of the navigation.

Third. The sanitation of lakes and marshy lands declared of exclusive interest to the Provinces.

Fourth. The construction and improvement of the buildings having a provincial character devoted to public service, and the preservation of historic and artistic monuments.

(Article 56 of the Regulations.)

ART. 10. The Municipal Administration shall, in accordance with the Organic Laws, have charge of—

First. The construction, repair, and preservation of local roads paid for by the Municipal Councils or which should be in charge of them, according to the provisions of this Law.

Second. The water supply of towns, in so far as the construction of the works or the concession of the same to private enterprises is concerned.

Third. The drainage of lakes or unhealthy lands which are declared of purely local interest.

Fourth. The construction and preservation of ports of local interest.

Fifth. The construction and improvement of buildings devoted to public service which depend on the Colonial Department, and the preservation of historic and artistic monuments.

Sixth. Highways and ornamentation of towns.

(Article 91 of the Regulations.)

ART. 11. The public works which have to be paid for with funds of the State shall be executed subject to the credits voted in the general budgets or in special laws.

ART. 12. In all the annual or general budgets of the State there must appear exactly the amounts necessary for the preservation of actually existing public works, which are in charge of the Colonial Department, as well as those which the economic resources will permit for carrying on those already commenced, and for undertaking other new ones.

ART. 13. No amount whatever can be expended in public works of the State in this Island under the Colonial Department, except in accordance with a project duly approved, according to the provisions of the present law.

ART. 14. In the annual budgets of the Provinces, there must be included exactly the amounts which may be necessary for the preservation of such actually existing works as are in charge of the Provinces, as well as whatever the resources of the said Provinces may permit for the prosecution of those already begun and for the undertaking of other new ones.

(Article 64 of the Regulations.)

ART. 15. No other provincial public work can be undertaken except in accordance with a project previously approved by the proper Deputation, after report of the Chief Engineer of the Province, or of the Provincial Architect, if there be one, in case of a work included under the name of civil construction.

(Articles 59, 89, and 120 of the Regulations.)

ART. 16. In the municipal budgets there shall appear precisely the amounts necessary for the preservation of public works which are in charge of the Municipal Councils, as well as what the resources of the

Municipality may permit for the prosecution of those already commenced and for the undertaking of other new ones.

(Article 99 of the Regulations.)

ART. 17. No other municipal public work can be undertaken without a project previously approved by the Governor of the Province, after hearing the Chief Engineer of the same, or the Provincial or Municipal Architect, in case of a civil building or construction.

(Article 93 of the Regulations.)

ART. 18. In the execution of all public works there must be observed, in so far as the investment of general provincial or municipal funds is concerned, the rules established in the Law of Accounting and in the organic laws of the Deputation and the Municipal Councils of this Island, as well as in the provisions of the Royal Decree of the 5th of May, 1876, in force for contracting public works when they are to be executed by contract.

CHAPTER III.

WORKS PAID FOR BY THE STATE.

ART. 19. The Colonial Department shall, at the proper time, formulate the general plan of public works which have to be paid for by the State, presenting the respective drafts of the law, in which these are determined and classified in their order of preference, to the Cortes.

(Article 2 of the Regulations.)

ART. 20. The Government can not undertake any public work for which there has not been a provision made in the budgets, assigning the proper credit. In any other case, in order to undertake a work, it shall be necessary for the Government to be authorized to do so by a special law. From this requisite are excepted works of mere repair, as well as those of new construction, which shall be declared of admitted urgency by the Colonial Department or its delegates, after report of the Consulting Board of Roads, Canals, and Ports and of the full Council of State.

(Articles 9, 10, 11, and 12 of the Regulations.)

The Colonial Secretary shall himself make use of the privilege to declare a work of admitted urgency which this article confers on him, when its value exceeds five thousand pesos. If the amount should be less, the Governor-General may authorize its execution, after favorable report of the Chief Engineer of the Province and of the Administrative Council which hears disputes, immediately reporting it to the Government.

ART. 21. No amounts whatsoever shall be included in the general budgets of the State for public works which are not included in the plans referred to in Article 19, unless the Government has been authorized to do so by a special law. In any case, in order to include the value of a work in the general budget, it shall be necessary that there

be a previous study made and that the project receive the proper approval.

Concerning works of preservation and repair, it shall be sufficient that the general credit for this purpose be included in the budgets of the State existing at the time in which these works are to be executed.

(Article 13 of the Regulations.)

ART. 22. With the legislative credits, the Government may order the study of public works, the execution of which it deems convenient, in compliance with the provisions of the two preceding articles.

(Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Regulations.)

ART. 23. The Government may impose assessments and taxes for the use of works which are building with general funds, without prejudice to the rights which may have been acquired, and making report thereof to the Cortes.

ART. 24. The Government may construct the works in charge of the State by management or by contract. The first method shall be applied only to those works which can not be contracted for because of their special conditions, or because they can not be easily provided for in the budgets, because of the predomination of the hazardous parts in them, or for any other reason.

(Article 14 of the Regulations.)

ART. 25. The Government may contract for public works of which it may be in charge:

First. By obligating itself to pay the value of the works, according as they are being constructed at the times, and in the manner which may be determined on in the special provisions of each contract, and in the general conditions which should be contained in all those referring to this service.

Second. By granting to contractors the right to dispose of, for a specified time, the proceeds of the assessments which may have been established for the use of the work according to the provisions of Article 23 of the present law.

Third. By combining the two methods referred to.

(Article 17 of the Regulations.)

ART. 26. When the works which the State has constructed may be operated with profit, this shall be done by means of a contract awarded after public bidding, excepting in the cases in which, because of special circumstances, it is declared proper that the Government shall take charge thereof. This declaration shall be made by a decree issued by the Colonial Department, after hearing the Consulting Board of Roads, Canals, and Ports, and the Colonial Department of the Council of State.

(Articles 6 and 54 of the Regulations.)

ART. 27. In the works which are executed at the expense of the State in the manner indicated in the second and third paragraphs of Article 25, the prices which are fixed for the use and operation of said works shall not exceed the schedule of rates in accordance with which

the award may have been made; but these rates may be reduced if the person to whom the award has been made shall deem it convenient, subject to the conditions which are prescribed in the contract.

ART. 28. In the articles of conditions of each contract shall be included the gratuitous services which those to whom the contract has been awarded must render, and the special rates for different public services.

ART. 29. The study of the projects, the direction of the works which are executed by management, and the supervision of those which are constructed by contract, shall, in all cases where the works are in charge of the State, be carried on by the Corps of Engineers of Roads, Canals, and Ports. The Government, through the same Engineers, shall carry on the inspection of provincial and municipal works which, according to the ninth paragraph of Article 8 of the present Law, is attributed to it.

Civil constructions are excepted, the study, management, and supervision of which should be intrusted to architects having professional degrees, who shall be approved by the Colonial Secretary.

(Articles 15 and 18 of the Regulations.)

ART. 30. Contractors shall be at liberty to select such persons as they may deem proper for the direction of the works which they obligate themselves to construct, who shall in all cases exercise their duties under the surveillance and inspection of the Government agents, as provided for in the previous article.

ART. 31. Contractors of State works, their employees, and laborers shall have the local benefits of the use of firewood, pasturage, and other rights which the inhabitants of the towns within the district in which said works are included, may enjoy.

ART. 32. The works of preservation and repair which are necessary for works in charge of the State, shall be carried on by the Colonial Department, adjusting themselves to the credits which shall have been assigned for that purpose in the general budgets, in accordance with the provisions of Article 12 and of paragraph 2 of Article 21 of this Law.

(Article 8 of the Regulations.)

CHAPTER IV.

PROVINCIAL WORKS.

ART. 33. There shall be established in each Province, after the proceedings which the Regulations may provide, the plans of public works, which, in accordance with Article 5 of this Law, shall be in charge of the respective Deputation.

These plans, in which the works shall be classified, showing the order of preference in which they should be constructed, shall be submitted for the approval of the Colonial Secretary.

(Articles 56, 57, and 58 of the Regulations.)

ART. 34. No works shall be undertaken at the expense of provincial funds, unless there be included the proper credit for this purpose in the budget of expenses of the Province.

ART. 35. In order that the appropriation for a public provincial work be included in the general expenses of the Province, it shall be necessary that said work be included in one of the plans referred to in Article 33, and that its project be previously and duly approved in the manner prescribed by Article 15 of the present Law.

Exception is made, however, of cases of admitted urgency, in which, after a special law or declaration of the Colonial Secretary, and after the proceedings provided for by the Regulations have taken place, the necessary credit for the execution of the work in question may be included in the budget of the expenses of the Province. But even in these special cases the proceedings of the study of the project and its approval must always have been first had, in accordance with the provisions of said Article 15, and also the declaration of public utility, which should be made in accordance with the provisions of the present law.

(Articles 60, 62, and 63 of the Regulations.)

ART. 36. With the credits which shall be included in the provincial budget, the Deputations may decide that the study of such public works in their charge as they may deem proper, shall be made, in accordance with the provisions of the two preceding articles.

ART. 37. The Provincial Deputations may impose taxes for the use of the work in their charge in order to reimburse themselves for the amount which they may have devoted to that purpose. The imposition of these taxes shall in all cases be submitted for the approval of the Government.

(Articles 65 and 87 of the Regulations.)

ART. 38. The Deputations may execute their works by management or by contract, proceeding in each case as provided by Articles 24 to 28, both inclusive, of the present Law in the manner prescribed therein concerning the works in charge of the State.

(Articles 60 and 61 of the Regulations.)

ART. 39. The projects, direction, and supervision of the works which are executed with provincial funds, shall be carried on by Engineers of Roads or by Assistants of Public Works. Civil constructions of a provincial character are excepted, which may be in charge of architects who have their professional degree.

Among the conditions established in each case shall be the naming of these technical agents by the proper Provincial Deputation.

(Articles 61, 66, 67, 68, and 71 of the Regulations.)

ART. 40. Contractors of provincial works may submit the direction of the same to such persons as they may deem proper, keeping in mind the provisions of Article 30 concerning the works of the State; and these persons shall have the benefits allowed by Article 31 to those who contract for works which shall be executed with general funds.

ART. 41. The works of preservation and repair which may be necessary for the works which are in charge of the Provinces, shall be carried on with reference to the credits which, as provided in Article 14 of the present Law, shall appear in the provincial budgets.

(Article 64 of the Regulations.)

ART. 42. Provincial public works shall be inspected by the Government, in accordance with the provisions of this Law, whenever the Colonial Secretary or the Governor-General thus orders, which shall at least be when they are finished and before they are turned over to public use.

(Articles 69 and 70 of the Regulations.)

CHAPTER V.

MUNICIPAL WORKS.

ART. 43. Municipal Councils shall, by the proceedings prescribed by the Regulations, formulate the plans of public works which may be in their charge, which shall be submitted for the approval of the Governor of the Province. If, from the decision of said authority approving or disapproving these plans there should be any appeal, the entire proceedings shall be sent to the Colonial Secretary, who shall definitely decide.

(Articles 91 and 92 of the Regulations.)

ART. 44. No municipal work can be carried out if in the budget of the respective Municipal Council there shall not be a credit assigned for this purpose, in the manner prescribed by the Laws and Regulations.

(Article 93 of the Regulations.)

ART. 45. In order that the appropriation for a municipal work may appear in the budget of the proper Municipal Council, it is necessary that said work be included in one of the plans referred to in Article 43, and that its project shall have been duly approved in the manner prescribed by Article 17 of the present Law. Exception is made in cases of admitted urgency, when, after the Governor has declared it, and after the Provincial Deputation has been heard, and with the right of appeal to the Governor on the part of the Municipal Council interested, there may be included in the Municipal budget the credit necessary for the execution of the work. Even in such cases a plan must have previously been drawn and the project approved, and the declaration of public utility of the works made, in conformity with the provisions of the present Law. For the approval of plans for municipal works affecting territories of towns belonging to different provinces, the Governors of the said provinces shall agree, and if there be any disagreement the papers shall be sent through the Governor-General with his report to the Colonial Secretary, who, after hearing the opinion of the

Consulting Board of Roads, Canals, and Ports, shall decide, with no further appeal.

(Articles 95 and 96 of the Regulations.)

ART. 46. Municipal Councils may impose assessments and taxes on the works which are executed at their cost in order to reimburse themselves for the amount which they may have expended. For the imposition of these taxes the authorization of the Government shall be necessary, which, in order to grant it, shall first hear the report of the Governor of the Province.

(Articles 98 and 119 of the Regulations.)

ART. 47. Municipal Councils may construct their works by management or by contract, subject to the provisions of the present Law concerning this matter, in connection with the works in charge of the State and of the Provinces.

(Article 94 of the Regulations.)

ART. 48. For the drafting of projects, direction and supervision of the works which have to be constructed with municipal funds, Municipal Councils may name the person whom they believe best fitted therefor, provided he has the necessary professional degree to accredit his ability.

(Articles 100 and 102 of the Regulations.)

ART. 49. The works of preservation and repair which are necessary for works in charge of Municipal Councils, shall be carried out without any other limitation than that they must come within the credits which, in accordance with Article 16, shall be contained in the municipal budgets for that purpose.

(Article 99 of the Regulations.)

ART. 50. Roads of communication, and the other public works which are constructed at the expense of the Municipal Councils, shall be inspected by the technical agents of the Government whenever the Governor may deem this proper, and in all cases shall be submitted to the inspection of these agents before being turned over to public use.

From this provision is excepted the ordinary building of paths and local roads.

(Articles 101 and 110 of the Regulations.)

CHAPTER VI.

WORKS EXECUTED BY INDIVIDUALS FOR WHICH NO SUBSIDY OR OCCUPATION OF THE PUBLIC DOMAIN IS ASKED.

(Articles 89, 90, and 120 of the Regulations.)

ART. 51. Individuals and companies may construct, without further restrictions than those imposed by the Police, Safety, and Public Health Regulations, any work whatsoever of private interest which does not occupy or affect the public domain or that of the State, or which does not demand the exercise of the right of eminent domain over private property.

ART. 52. Individuals and companies may also build and operate public works devoted to general use and the others which are enumerated in Article 7 of this Law, when given the right to do so by concession.

ART. 53. Said concessions, providing that no subsidy or constant occupation of the public domain is requested, or that they do not destroy the plans which are referred to in Articles 19, 33, and 43, shall be granted by the Colonial Department, by the Provincial Deputation, or by the Municipal Council, respectively, in whose charge the works may be. The concessions of works for which no subsidy is requested, but which destroy the plans of the works in charge of the State, referred to in Article 19, can not be granted except by means of a law. In the same case those which destroy the plans of municipal or provincial works, referred to in Articles 33 and 43, can not be granted except by means of Royal Decrees issued by the Colonial Department.

(Articles 19, 72, 73, 103, and 104 of the Regulations.)

ART. 54. In all cases the concessions referred to in the preceding article shall not be granted for more than ninety-nine years, unless the very character of the work should demand a longer period, which shall be always granted by a law. When the time of the concession has run, the work shall become the property of the State, of the Province, or of the Municipality in whose charge it might be. Every concession shall be granted without prejudice to third parties and protecting the interests of private persons.

ART. 55. In order that a concession to an individual or company of a work in the cases referred to in Article 53 may be granted, there shall be necessary a project with all the facts which, according to the provisions of the Regulations, may be necessary to form a judgment of the work, of its objects, and of the advantages which will inure to the general interests from its construction.

(Articles 20, 21, 22, 74, and 105 of the Regulations.)

ART. 56. In order to form the project referred to in the preceding article, the petitioner may request of the Colonial Department, of the Governor-General, or of the proper corporations, the necessary authorization.

This authorization shall only carry with it—

The power to enter the private property of another in order to make the studies, after having received the permission of the owner, manager, or attendant who may reside on the property or near it; and otherwise, or when this is not granted, on the permission of the Alcalde, who shall always grant it when there is security, by means of a reasonable sum, for the immediate payment of the damages which may arise.

(Articles 20, 21, 74, and 105 of the Regulations.)

ART. 57. Individuals or companies which ask to construct or operate a public work, shall direct their petition to the Colonial Secretary, to the Governor-General, or to the corporation which in each case has power to grant the concession, accompanied by the project mentioned in Article 55, and also by a document showing that there has been

deposited, as a guaranty of the proposal, 1 per cent of the estimate of said work.

(Articles 23, 75, and 106 of the Regulations.)

ART. 58. The Government, in cases in which it has the right to do so in accordance with Article 53, shall grant the concession, after consulting, in order better to form its judgment, the reports which concern each kind of works which may be established by special laws and by the Regulations, there being necessary as an indispensable requisite for the approval of the project, the previous opinion of the Consulting Board of Roads, Canals, and Ports, or of the Royal Academy of San Fernando, as the case may be.

When, according to the provisions of said article, a concession has to be granted by the legislative power, the Colonial Secretary shall present to the Cortes the proper form of law, if from the proceedings there should result the approval of the convenience of carrying out the work referred to in the petition.

The Provincial Deputation and Municipal Councils shall follow the provisions of the Regulations for the course of the proceedings to obtain the concession which they may have power to grant, in accordance with Article 53 of the present Law.

(Articles 24, 25, 26, 27, 76, 77, 107, 108, and 109 of the Regulations.)

ART. 59.—As a general rule, there shall appear in the terms of every concession the following:

First. The amount which shall be deposited by the concessionaire as a guaranty of the fulfillment of his engagements, which shall be from 3 to 5 per cent of the estimate of the works.

Second. The time in which the work shall begin and end.

Third. The conditions for the establishment and for the use of the works, which in each case may be deemed convenient, in accordance with the laws.

Fourth. The cases of forfeiture and the consequences of this forfeiture.

(Articles 28, 29, 77, 109, and 110 of the Regulations.)

ART. 60. The asking of subsidy after the said concession has been granted, shall be considered as a case of forfeiture of a concession included in Article 53. When by means of a law a subsidy or an aid with public funds in order to execute the work shall be granted, the subsidy or the aid shall not inure directly to the benefit of the former concessionaire, but only to that of the work itself, which shall be immediately submitted to public auction, in accordance with the provisions of this Law, concerning subsidized works.

(Article 29 of the Regulations.)

ART. 61. When more than one petition for the same work is presented, the one shall be preferred which offers the greatest advantages to the public interests. In order to determine these advantages, the Colonial Department, or the corporations which in a proper case have the right to grant the concessions, shall proceed to obtain the reports provided for by the Regulations.

When the Colonial Secretary has the authority to grant the concession, before deciding on the preference between the petitions, he shall hear the corporation interested and the Colonial Department of the Council of State.

(Articles 33, 80, 112, 113, and 118 of the Regulations.)

ART. 62. If from the reports referred to in the preceding article it shall appear that there is an equality among the proposals made, the concession shall be granted by means of a public bidding, in which not only the petitioners, but any other person who shall prove that he has made the deposit of one per cent of the estimate of the work, may take part.

The bidding shall be in the first place on the reduction of the rates of operation, and if in these there should result an equality of reductions, then in the period of the concession. The one to whom the award is made shall be obliged to pay to the signer of the petition which may have been first presented, in case the latter shall not have been the best bidder, the expenses of the project according to the expert appraisal of the same made before the public bidding.

(Articles 34, 35, 36, 37, 38, 39, 81, 82, 113, and 114 of the Regulations.)

ART. 63. No concession of a public work, asked by companies or individuals, can be made without the previous publication of their petition in the Gaceta de Madrid and of Havana and in the Boletin Oficial of the respective province, fixing the period of thirty days for the admission of other propositions which may be better than the first.

(Article 32 of the Regulations.)

ART. 64. When the concession of a public work is made, the Government, or the corporations which in a proper case may have granted it, shall supervise, through their technical agents, the construction of the work, in order that the stipulated conditions may be observed. The same supervision shall be observed in connection with the operation, when the works have been completed, and when such operation is authorized in the manner prescribed by the Regulations.

(Articles 40, 78, and 110 of the Regulations.)

ART. 65. The concessionaire may, after authorization by the Colonial Department, or the corporation which may have granted the concession, alienate the works, provided that the grantee shall obligate himself in the same terms and with the same guaranties as the first concessionaire, for the fulfillment of the stipulated conditions.

ART. 66. The guaranty referred to in the first paragraph of Article 39 shall not be returned to the concessionaire until he has proved the construction of works to an amount equivalent to a third part of those included in the concession. Said works shall then take the place of the guaranty, and shall be liable for the fulfillment of the provisions of the concession.

(Article 28 of the Regulations.)

ART. 67. The declaration of forfeiture of the concession of a public work of those included in this Chapter, whenever made, shall be by the Colonial Department, or the corporation which might have granted it, and always after proceedings in which the interested party must be heard.

(Articles 29, 30, 78, and 111 of the Regulations.)

ART. 68. The forfeiture of the concession by reason of infractions imputable to the concessionaire shall always carry with it the loss of the guaranty, to the benefit of the general Provincial or Municipal Administration, as the case may be.

(Articles 31, 79, and 111 of the Regulations.)

ART. 69. If on the declaration of forfeiture the construction of the work shall not even have been commenced, the Administration shall be relieved of all agreements with the concessionaire. If the works have already been commenced, but if they should not be sufficient in order to return his guaranty to the concessionaire, the works constructed shall be offered to public bidding for a period of three months, and the basis of the bids shall be the value of the acquired lands, of the completed works, or the materials thereon. The works shall be awarded to the one who offers most for them, and the new concessionaire shall then pay to the first the amount of the bid, and shall be subrogated to him in all his rights and obligations. In both cases the first concessionaire shall forfeit his guaranty.

(Articles 31, 79, and 111 of the Regulations.)

ART. 70. If on the declaration of forfeiture the guaranty shall have been returned, the works completed by the concessionaire shall in the same way be offered to public bidding, for a period of two months, on the same basis. From the amount offered by the best bidder, who shall be declared to be the owner of the concession, the Administration shall reserve the amount of the returned guaranty, and the difference, should there be any, shall be turned over to the first concessionaire.

(Articles 31, 79, and 111 of the Regulations.)

ART. 71. In the cases of the preceding articles, if there shall not be any auction by reason of an absence of bidders, the executed work shall again be put up for public bids for a period of one month, on the same basis.

If the concession is not awarded in any of the auctions, the State, Province, or towns which may have granted the execution of the works, shall take charge and shall use them in the manner deemed convenient, without the right to any claim whatsoever on the part of the concessionaire, whose rights shall be declared forfeited.

(Articles 31, 79, and 111 of the Regulations.)

ART. 72. No work for the operation of which there may be necessary the occupation of another work belonging to the State, the Province, or towns can be granted without previous public bidding, on the basis which may be determined for this purpose. There shall be reserved

the right of preference on equal terms to the petitioner, and when the concession is not granted to him he shall be paid, by the one to whom it is awarded, the amount of the project, according to expert appraisal made and advertised before the public sale.

(Articles 38, 82, and 114 of the Regulations.)

CHAPTER VII.

WORKS SUBSIDIZED WITH PUBLIC FUNDS, BUT WHICH DO NOT OCCUPY THE PUBLIC DOMAIN.

(Articles 89, 90, and 120 of the Regulations.)

ART. 73. Whenever a subsidy of any kind is requested for the execution by individuals or companies of a public work, which shall not constantly occupy or make use of a part of the public domain, the concession for this purpose, when the subsidy shall be given by a Province or some Municipality, shall be made by the corporation in whose charge the works are, but in every case after public bidding; and if the subsidy shall come from the State the concession shall moreover be the subject of a law.

By subsidy, for the purposes of this article, is understood any direct or indirect aid whatsoever from the public funds, including the exemption of customs duties on the material which is to be introduced from abroad, which exemption must always be granted by a law.

(Articles 73 and 104 of the Regulations.)

ART. 74. The concessions referred to in the preceding article shall always be temporary and can not exceed ninety-nine years. When this period has elapsed, the work shall become the property of the State, Province, or town which may have granted the subsidy.

ART. 75. The individuals or companies who request a subsidy of public funds to construct a work of those referred to in this Chapter, may ask for the necessary authorization to make the proposed studies in the terms and with the rights mentioned in Article 56 of the present Law. The petition for the concession shall be accompanied by a complete project of the works, according to the provisions of the Regulations, and also a document showing that the petitioner has deposited, as a guaranty for the fulfillment of the propositions which he may have made or admitted in the course of the proceedings, the 1 per cent of the total estimate of the said works.

(Articles 41, 83, and 115 of the Regulations.)

ART. 76. The Colonial Department, or the proper corporation, shall make investigation, as determined by the Regulations, in order to prove the utility of the project. If the work referred to should be included in the plans referred to in Articles 19, 33, and 43 of this Law, it shall not be necessary to make this investigation.

(Articles 41, 83, and 115 of the Regulations.)

ART. 77. When the project is approved in the manner prescribed by the Regulations, when the work has been gone over on the ground by the Engineers of the State, or by the technical officials designated by the Deputation or Municipal Councils, according to circumstances, and when the conditions of the concession are mutually accepted, the Colonial Secretary, in case of State works, shall present to the Cortes the form of law necessary to grant it, in accordance with the provisions of Article 73.

(Articles 41, 42, 43, and 84 of the Regulations.)

ART. 78. When the maximum subsidy which may be given for the projected work has been fixed by a law, in case of State works, or by the Deputation or the proper Municipal Council, in case of works in charge of these corporations, the concession shall be offered for public bids on this basis for three months; and it shall be awarded to the best bidder, with the obligation to pay to the petitioner, if he should not be given the award, the value of the studies of the project, in accordance with the expert appraisal made and announced previously to the bidding, in the form determined by the Regulations.

(Articles 43, 44, 45, 52, 53, 84, 86, and 116 of the Regulations.)

ART. 79. In order to take part in the bidding it is necessary to prove that there has been deposited, as a guaranty of the propositions which are presented, the 1 per cent of the total value of the work, according to the approved estimate.

(Articles 43, 84, and 116 of the Regulations.)

ART. 80. In no case can the instrument awarding the concession be executed until the concessionaire has proved that he has deposited, as a guarantee of the fulfillment of his obligations, 5 per cent of the estimated value of the works.

If the concessionaire allows fifteen days to pass without depositing the guaranty, the award shall be declared to be without effect, with the loss of the deposit referred to in the preceding article, the concession or the work being again put up for public bids for the period of forty days.

The guaranty treated of in this article shall not be returned to the company to which the concession is granted until the works of the concession shall be completely finished and in condition for operation.

(Articles 46, 85, and 117 of the Regulations.)

ART. 81. The provisions of Article 64 of the present law concerning the supervision which the Administration must exercise over the works during their construction and operation, are applicable to subsidized works.

The supervision of subsidized works shall extend also to the economic and mercantile part of the company to which the concession is granted, so that the delivery of the aids or subsidies shall be made in proportion to the executed works, in accordance with the stipulated provisions.

(Articles 55 and 88 of the Regulations.)

ART. 82. No variation or modification whatever may be made in the project which shall serve as the basis of a subsidized concession without a competent authorization of the Colonial Department or the corporation which might have granted it.

The authorization of the Colonial Department in connection with works subsidized by the State can not be granted until after hearing the proper corporation and the full Council of State, and after fulfilling the other requisites required by the Regulations for the execution of this law.

(Articles 47 and 45 of the Regulations.)

ART. 83. When, in consequence of the variations referred to in the preceding article, the cost of the works is diminished, the amount of the aid or subsidy shall be reduced proportionately to such diminution.

If the variations or modifications should result in increasing the cost, even when by means of them the works will be perfected or advantages obtained in their use or operation, the subsidies and the aids granted by the law of concession shall not for these reasons be increased unless the contrary shall be provided for by special law.

(Articles 47 and 85 of the Regulations.)

ART. 84. The declaration of forfeiture of the subsidized concession shall be made by the Colonial Department in all cases affecting State works, and in the other cases by the Deputation or the Municipal Council which, in accordance with Article 73, may have granted such concessions.

Whenever the forfeiture of a concession with subsidy has been finally declared, the amount of the guaranty which, in accordance with Article 80, may have been required from the concessionaire, shall remain for the benefit of the State, or of the proper corporation.

(Articles 48 and 85 of the Regulations.)

ART. 85. Concessions of subsidized public works shall be absolutely forfeited if the work shall not be begun or terminated entirely, or in the parts into which it may have been divided, within the time determined on.

Whenever there is a case of force majeure, and it is duly proved by virtue of an investigation made, as provided by the Regulations, the time may be extended for that absolutely necessary. If the subsidy comes from general funds, the Colonial Secretary must grant the extension of time, after hearing the Council of State.

At the end of the extension, the concession shall be forfeited, if within that period the stipulations are not carried out.

(Articles 49 and 85 of the Regulations.)

ART. 86. When by the fault of the company the public service of a subsidized work is interrupted, the Colonial Secretary, the Deputations, or the Municipal Council, as the case may be, shall immediately adopt the necessary measures to assure its provisional operation at the expense of the concessionaire.

Within six months the company must prove that it has sufficient resources to continue the operation, which it may assign to another company or to a third person, after previous special authorization of the Government or the proper corporation. If even by these means the service is not continued, the concession shall be considered forfeited.

(Articles 50 and 85 of the Regulations.)

ART. 87. From the resolution of the Government declaring forfeiture the concessionaire may appeal, by the administrative jurisdiction on contests, within the period of two months from the day on which he may have been notified. When this period has passed without an appeal being made, the decision of the Government shall be considered as consented to.

The concessionaires may also appeal by the administrative jurisdiction of contests, within the same time, from the decision of forfeiture which, according to its powers, may be made by the Deputations or the Municipal Councils, after the appeal to the Government shall have been exhausted, in the manner prescribed by the Law.

(Articles 48 and 85 of the Regulations.)

ART. 88. When a forfeiture of a subsidized concession is finally declared, the executed works shall be offered to public bids for the term of three months. The basis for these bids shall be the value, according to appraisal, of the lands acquired, of the completed works, and of the materials of construction and operation thereof, deducting the amounts which, as aid or subsidy, may have been given to the concessionaire in lands, works, cash, or other kind of property.

(Articles 51 and 85 of the Regulations.)

ART. 89. If, at the auction referred to by the preceding article, there should be no bidder, a new auction shall be advertised for the period of two months, on the basis of two-thirds of the amount of the appraisal. If even then the sale should be prevented because there were no bidders, it shall be announced the third and last time, for a period of one month, at a fixed amount.

(Articles 51 and 85 of the Regulations.)

ART. 90. If at any of the three auctions referred to in the previous articles, propositions admissible within the advertised terms shall be made, the work shall be awarded to the best bidder, who shall give in guarantee 5 per cent of the amount of the works which are incompleted, and shall receive the concession under the same conditions as were granted in the forfeited one, being substituted to the previous concessionaire in all his rights and obligations, and subject to the provisions of the present Law.

(Articles 51 and 85 of the Regulations.)

ART. 91. From the proceeds of the works publicly sold, which shall be paid by the concessionaire, in the manner prescribed by the previous article, there shall be deducted the expenses of the appraisal and sale, and the rest shall be turned over to whomsoever it may belong.

(Articles 51 and 85 of the Regulations.)

ART. 92. In case the concession should not be awarded at any of the three auctions, the State, Province, or town in whose charge the work may be, shall take charge of all which may have been constructed, and shall continue, if it deems it proper, by means of a new concession, which shall be granted in all things in conformity to the provisions of this Law, without the first concessionaire in such case having any right to any indemnity whatsoever.

(Articles 51 and 85 of the Regulations.)

CHAPTER VIII.

CONCESSIONS OF THE PUBLIC DOMAIN AND OF THE DOMAIN OF THE STATE.

ART. 93. Concessions which individuals or companies request for the execution of works which have constantly to occupy or use a part of the public domain devoted to general use, shall in all cases be made by the Colonial Department, which shall follow the provisions established for this purpose in Chapter VI and in Chapter VII of this Law, according to whether there are involved subsidized works or those for the execution of which an aid of some sort is asked from the public funds.

(Article 122 of the Regulations.)

ART. 94. Individuals or companies who ask for a concession of the public domain for the construction of a work of general or private use shall direct their petition to the Colonial Department or its delegates, with a project made in accordance with the Regulations for the execution of this Law.

The Colonial Department shall examine the investigations which go to prove the established rights in the public domain which it is desired to occupy, the advantages or inconveniences which might result to the general interests from this work, and the other circumstances which it may be desirable to take into account before the granting of the concession; all of which shall be done in accordance with the provisions of the special laws and of the Regulations.

(Articles 123, 124, 125, 134, and 135 of the Regulations.)

ART. 95. If, from the investigation referred to in the preceding article, it should appear that the work in question does not hinder or impede the use of the public domain affected thereby, the concession may be granted by the Colonial Department or its delegates, in accordance with the provisions of the special laws of the several works, adding among the general provisions the following:

First. The time in which the works shall commence and be completed.

Second. The conditions for the establishment and use of the work and the consequences of failure to comply with these conditions.

Third. The guarantee which the concessionaire shall give in order to secure the fufillment of the stipulated provisions.

Fourth. The cases in which the concession may be declared forfeited, as well as the consequences of such forfeiture.

Fifth. The establishment of maximum rates designated for the use and profit of the works.

(Article 126 of the Regulations.)

ART. 96. If, before any decision shall be made concerning the petitions of the public domain referred to in the preceding articles, there should be another or other petitions incompatible with the first, the Colonial Department shall select those which offer the best terms to the public interests, for which purpose an investigation of the competing projects shall be held, in the manner determined by the Regulations.

In similar cases, nevertheless, and in those in which it is not believed to be opportune because of special circumstances, the Colonial Department may decide that the concession be given, after a public bidding, in accordance with the provisions of Articles 97 and 98.

(Articles 127, 128, 129, 130, 131, 132, and 133 of the Regulations.)

ART. 97. If, from the investigation referred to in Article 94, it should appear that the work does not hinder or impede the use and profit to which the part of the public domain affected by the work may be devoted, the concession may also be granted by the Colonial Department when it is thus deemed proper for the general interests.

The concession, in the case of the present article, shall always be made after public bidding, which shall be based in the first place on the reductions in the rates approved for the use and profit of the work; and in case of equality of these rates, on the raising of the price which shall previously have been designated for the part of the public domain which shall have to be ceded.

(Articles 135 and 136 of the Regulations.)

ART. 98. The conditions of the concession when, in accordance with the previous article, it shall have been made through public bidding, shall be those indicated in Article 95; adding that the person to whom the award is made shall be obliged, when he is not the same one who presented the project, to pay the petitioner the expenses which said project may have occasioned him, according to expert appraisal made and published previously to the public sale.

(Article 137 of the Regulations.)

ART. 99. When, for the concessions of the class referred to in Article 97, two or more petitions may have been presented, the Colonial Secretary shall select, by the procedure determined by Article 96, the one which appears most proper to serve as the basis of the public biddings which must determine to whom the concessions shall finally be granted.

(Article 138 of the Regulations.)

ART. 100. The concessions referred to in the previous articles of this Chapter shall be granted for ninety-nine years at most, except in

the cases wherein the special laws of public works establish a longer period, or when the concession is granted by means of a special law which may thus determine.

In all cases these concessions shall be understood to be made without prejudice to third parties and protecting vested rights. The concessionaire shall consequently be responsible for the damages and injuries which the work may occasion to private property or to the part of the public domain not occupied by him.

(Article 139 of the Regulations.)

ART. 101. When the concession is granted and the guaranty is deposited, an instrument shall be executed in which shall appear the grant of the concession and the stipulated conditions; certifying besides to the deposit of the guaranty, and adding a printed and authorized copy of this Law and of the Regulations for its execution.

(Article 139 of the Regulations.)

ART. 102. The concessionaire may transfer his concession or freely alienate the works, it being understood, however, that the one who substitutes him in his rights also substitutes him in his obligations imposed by the provisions of the concession, and that the guaranties which he may have made to cover his liability remain in existence.

Of the alienation or transfer of the rights belonging to the concessionaire, an account shall be given to the Colonial Department, or to the corporation which might have granted the concession, for the proper purposes.

(Article 139 of the Regulations.)

ART. 103. When the concession is made, the Administration shall have the right to see that the stipulated conditions are absolutely fulfilled, as well during the execution of the works as during their operation.

The guaranty referred to in the third paragraph of Article 95 shall be returned to the concessionnaire when he proves that he has completed the works, and this shall be made to appear in his document of concession.

(Article 139 of the Regulations.)

ART. 104. The declaration of forfeiture of the concession of the public domain, in a proper case, shall be pronounced by the Colonial Secretary, after proceedings have been had, in which the interested party shall be especially heard. The consequences of the forfeiture shall be those which for similar cases are established in Chapters VI and VII of this Law.

When the forfeiture is declared, the instrument granting the concession shall be null, and shall be surrendered.

(Article 139 of the Regulations.)

ART. 105. When a work which shall permanently occupy a part of the public domain, in which there is no public use or profit whatever, is to be carried out by individuals or companies, the administrative authorization which the Colonial Secretary or his delegates is author-

ized to grant shall be sufficient, in accordance with the provisions of special laws and of the Regulations.

(Articles 141, 142, 143, and 144 of the Regulations.)

ART. 106. The person requesting the authorization referred to in the preceding article shall accompany with his petition a plan in which shall appear the object of the work, the part of the public domain it is intended to occupy, and an estimate of the works.

This project shall pass through the proceedings prescribed by special laws and the Regulations before the authorization shall be granted.

(Article 140 of the Regulations.)

ART. 107. When, for the execution or operation of a work requested by individuals or companies, it shall be necessary to occupy permanently a part of the public domain devoted to general use, there shall first be also obtained the authorization of the Colonial Secretary or his delegates. This authorization may be granted without demanding any guaranty or the presentation of the project, and by the brief proceedings which are designated by the Regulations.

(Article 145 of the Regulations.)

ART. 108. The administrative authorization is also needed for the execution or operation of a work which affects established servitudes on private property for the benefit of the public domain.

This authorization shall be granted by the Colonial Secretary or his delegates, as in the case of the preceding article; but it may be perpetual, saving always the rights of private property.

(Article 145 of the Regulations.)

ART. 109. For the works devoted to the operation of a private industry, the occupation of matters connected with the public domain may be granted, in accordance with the provisions of this general Law and the special laws of public works; when the concession referred to in the preceding paragraph has been made, the individual or company obtaining it may construct the work and make use of it in the manner in which it may be deemed convenient, without further intervention on the part of the Government than that relating to the safety, policing, and management of the public domain.

(Article 146 of the Regulations.)

ART. 110. When, for the execution of a work, by companies or individuals, devoted to public or to private use, there may be occupied a part of the public domain of the State, the previous concession of the Colonial Secretary shall be necessary, in accordance with the provisions of the articles of this Chapter treating of public domain; but always with the indispensable prerequisite that there be public bidding, at which the project of the petitioner shall serve as the basis.

The bidding shall have for its object the determination of the amount which the concessionaire shall have to pay for the domain ceded, and shall take place in accordance with the formalities necessary for the sale of public lands, the concession being granted to the best bidder.

The petitioner shall have the right of preference on equal terms at the bidding, and, in case he shall not take the concession, of being indemnified by the person to whom it is awarded, for the expenses of the project, according to expert appraisal made and published before the public sale.

(Article 147 of the Regulations.)

ART. 111. The authorization of the Colonial Secretary is necessary to execute or operate a work which changes servitudes established in the domain of the State.

This authorization shall be ceded in conformity with similar proceedings to those established by Article 108 of this Law.

(Article 148 of the Regulations.)

ART. 112. The resolutions concerning concessions by competent authority of the public domain and of the domain of the State, shall be final, saving the appeals which may be proper according to the Laws.

CHAPTER IX.

DECLARATION OF PUBLIC UTILITY.

ART. 113. Before the execution of any work devoted to public use, whoever may construct it, there shall be the declaration of public utility.

From this formality are excepted:

First. The works which are in charge of the State and which are carried out in accordance with the provisions of Chapter III of the present Law.

Second. The works included in the general provincial or municipal plans, designated in Articles 19, 33, and 43 of the Law.

Third. Every work, of whatsoever kind, the construction of which may have been authorized by special law.

No work devoted to private use can be declared of public utility.

(Article 149 of the Regulations.)

ART. 114. The declaration of public utility shall carry with it, so far as the individuals who request it are concerned:

First. The right of neighborhood for the builders and their employees, which consists of the use of the objects enjoyed in common in the district of the towns in which the works are situated.

Second. The application of the law of eminent domain to private property in accordance with the provisions of the said Law and of the Regulations for its execution.

Third. The exemption from the land tax and the property tax on the transfers of property which may take place in consequence of the application of the said law of eminent domain.

The declaration of public utility may also carry with it the exemption from other temporary or permanent taxes, whenever it is thus determined by a special law for each case.

(Article 150 of the Regulations.)

ART. 115. The declaration of public utility, when it shall have been made in accordance with the provisions of Article 113 and shall carry with it the application of the law of eminent domain, shall be made by the legislative power in relation to works which, in the judgment of the Government, are of great importance; by the Colonial Department in reference to works paid for by the general funds of the State, the budgets of which are approved, and by the Governor-General in reference to provincial and municipal works, which may embrace the territory of two or more provinces, and which may be submitted to his resolution according to Article 45; by the Governor-General in reference to State, provincial, or municipal works, the projects of which may be approved by his authority, according to this law, and by the respective Governors in what refers to provincial and municipal works which are within the territory of his jurisdiction.

In case the exercise of the right of eminent domain is not requested, the Municipal Councils shall have the right to make the declaration of public utility when the work is municipal, and is included in one municipal district; the Provincial Deputations shall make the declaration when the work is provincial, and when, being municipal, it is included in two or more towns; and lastly, the Colonial Secretary or the Governor-General, respectively, when the work is in charge of the State, and when, being provincial, it shall embrace territories belonging to more than one province.

(Articles 152, 153, 154, 155, 156, 157, 158, and 159 of the Regulations.)

ART. 116. The individual or company which asks for the declaration of public utility of a work shall annex to his or its petition a complete project, so that judgment thereof may be formed, and of its object, of the private property which it shall occupy, and of the advantages which shall accrue to the general interests.

(Article 151 of the Regulations.)

ART. 117. Before adopting a resolution, the project shall be submitted to an investigation, in which shall be heard, in the first place, all those interested in the condemnation proceedings, if the application of the law of eminent domain is requested, and afterwards the other individuals, officers, and corporations that, for each case, are specified in the Regulations.

When the investigation has been made, in the cases in which the declaration of public utility is to be declared by the Cortes, the Colonial Secretary shall present the proper form of law. As to the rest, the Colonial Secretary, his delegates, or the proper corporation shall decide upon the declaration requested, as may be deemed proper.

(Articles 152, 153, 154, 155, 156, 157, 158, and 159 of the Regulations.)

ART. 118. The resolutions which, in relation to public utility, may be adopted by the competent central Provincial or Municipal Administration shall be final, saving the appeals which are proper in accordance with the Law.

(Article 160 of the Regulations.)

CHAPTER X.

COMPETENCY OF JURISDICTION IN MATTERS CONNECTED WITH PUBLIC WORKS.

ART. 119. The administrative jurisdiction to hear disputes shall hear the appeals against the rulings of the Administration—

First. When the forfeiture of a concession made to individuals or companies in the terms prescribed by this law is declared.

Second. In all those cases in which the administrative resolutions which are final affect rights acquired by virtue of rulings emanating from the same Administration.

ART. 120. The tribunals of justice shall have jurisdiction of—

First. Questions which may arise between the Administration and individuals concerning the public domain or private property, and concerning servitudes founded on titles of civil rights.

Second. Questions which may arise between individuals concerning the preferred right to the public domain, according to the present law, when the preference is founded on titles of civil rights.

Third. Questions relative to damages and injuries occasioned to a third person in his property right, the alienation of which is not compellable under the right of eminent domain, by reason of the establishment or use of the works which are the subject of the concession, or for any other causes depending on the concession.

CHAPTER XI.

GENERAL PROVISIONS.

ART. 121. Foreign capital which is employed in public works and in the acquisition of lands necessary for them, shall be exempt from reprisals, confiscations, and embargoes by reason of war.

ART. 122. The provisions of the present Law do not invalidate any of the rights acquired prior to its publication and in accordance with the legislation on which they may have been founded.

ART. 123. The proceedings relative to public works which, on the publication of these Laws, may be pending, shall be carried out in accordance with the prior legislation under which they were started, unless the interested parties prefer to submit to the provisions of the present Law.

In case there are several interested parties, and they do not agree, the proceedings shall follow the provisions of the former legislation.

ART. 124. The Colonial Secretary, after hearing the Secretary of the Navy regarding matters of ports which affect the services depending on that Department, and by himself in the others, but always after a report of the Consulting Board of Roads, Canals, and Ports, and after

hearing the full Council of State, may decide that the special laws published in the Peninsula relative to railroads, highroads, waters, and ports may be extended to the Colonies, and of the Regulations and instructions for their application, introducing in them the modifications which he may deem proper; but always after the report of the Consulting Board of Roads, Canals, and Ports, and after hearing the full Council of State.

ART. 125. All laws, decrees, and other prior provisions affecting public works which may be in conflict with the present Law are hereby repealed.

Madrid, April 19, 1883.

GENERAL GOVERNMENT OF THE ISLAND OF CUBA,

Office of the Secretary, Department of Public Works.

The Colonial Department, under date of the 26th of last April, communicates to His Excellency, the Governor-General, the following Royal Order:

YOUR EXCELLENCY: In compliance with Article 2 of the Royal Decree of the 19th instant, ordering that the General Law of Public Works be applied to the Island of Cuba, His Majesty, the King (whom God preserve), in conformity with what has been consulted with the full Council of State, has seen fit to approve the annexed Regulations for the execution and fulfillment of said law. By Royal Order I communicate it to Your Excellency for your information and consequent action.

And the approval of His Excellency having been given on the 19th of the present month, by his superior order there follows the publication of the said Regulations, for general information.

Habana, May 30, 1883.

The Secretary of the General Government.

M. DIAZ DE LA QUINTANA.

REGULATIONS FOR THE EXECUTION OF THE GENERAL LAW OF PUBLIC WORKS OF THE ISLAND OF CUBA.

TITLE FIRST.

WORKS IN CHARGE OF THE STATE.

CHAPTER I.

PROJECTS AND CONSTRUCTION OF WORKS BY THE METHOD OF ORDINARY CONTRACTS.

ART. 1. In accordance with Article 4 of the General Law and the special laws for each kind of works, the following are in charge of the State:

First. Highroads, railroads, and ports included in the corresponding plans.

Second. Light-houses for the illumination of the coast, and the establishment of all kinds of maritime signals.

Third. The work of retaining within their beds and making navigable the principal rivers, and the drainage of lakes and marshes belonging to the State.

Fourth. Civil constructions for the service of the Administration of the State.

(Article 4 of the Law.)

ART. 2. The Colonial Secretary, who has the administrative management of the works designated in the preceding article, shall make the plans of those which are in charge of the State, following the proceedings laid down in the proper Regulations for the execution of the laws of highroads, railroads, and ports.

(Article 19 of the Law.)

ART. 3. The Colonial Secretary, in conformity with the provisions of Article 22 of the General Law, shall order the study of the works included in the plans of the State, in the order in which they are respectively mentioned and according to the legislative credits which admit of it.

(Article 22 of the Law.)

ART. 4. When the study of any work shall be necessary, the Governor-General may give the proper order to the Inspector-General of Public Works, who shall communicate it to the Engineer of the respec-

tive Province. Said Engineer shall make the estimate of the expenses which the study may necessitate, and shall submit it for superior approval. The Governor-General shall give this approval when the amount does not exceed 5,000 pesos, and the Colonial Secretary shall do so in all other cases.

(Article 20 of the Law.)

ART. 5. Whenever the work affects the territories of two or more provinces, the Chief Engineers of each two contiguous provinces must beforehand as to the connecting points which it is advisable to adopt. If there be disagreement, the Colonial Secretary shall decide on reports of the said Chiefs and after hearing the Consulting Board of Roads, Canals, and Ports. After the said point has been decided, each engineer shall proceed independently within his territory. In the said case, the Colonial Secretary, when he shall deem it opportune, may order the direction of the plan to be intrusted to one of the two Chief Engineers, or he may appoint for the purpose another member of the Corps.

(Article 22 of the Law.)

ART. 6. Every project must consist of the following documents:

First. Explanatory memorial.

Second. Plans.

Third. Articles of technical conditions.

Fourth. Estimate.

This last document shall include, besides the cost of the work, the amounts which it may be considered necessary for condemnation proceedings, and the drainage necessary for the foundations of hydraulic works, as well as all the other dependencies of the work, with the object of forming an idea of the total cost.

When the projected work may be operated, with earnings, there shall be accompanied the schedule of rates which are to be established for its use and profit, and the basis on which the application of the proposed schedule is to be made, as well as a calculation of the proposed gain to the company.

The projects of the works shall be made in accordance with the forms which govern at the time of their formation, as well as the general rules of the service and the special instructions which in each case the general Direction may deem it convenient to establish.

(Articles 22 and 26 of the Law.)

ART. 7. For works of ports, besides the formalities expressed in the preceding article, those provided by the special law concerning the preliminary plans and investigations, which must precede the drafting of the final projects, must be observed.

(Article 22 of the Law.)

ART. 8. Works of repair can not be carried out until after the approval of the estimates made by the Chief Engineers of the Province, in accordance with the instructions which exist for this kind of service.

For the preservation of the existing works in charge of the State the Chief Engineers shall draft annual estimates, which, with ample time, shall be sent through the General Inspection for the proper approval.

(Article 32 of the Law.)

ART. 9. When a work not included in the plans of the State is under consideration, the execution of which shall nevertheless be deemed proper in the judgment of the Government, the Colonial Secretary shall order that the Engineers make a preliminary project of the work.

This preliminary project shall be drawn in accordance with the instructions which may be given in each case, and shall always consist of a memorial and plans which give a clear idea of the work and of its principal details, with an idea of its cost.

If the work affects more than two provinces, the rules fixed in article 5 as to connecting points shall be taken into consideration in the drafting of the preliminary project, of which as many copies shall be made as there may be provinces interested in the work.

(Articles 20 and 22 of the Law.)

ART. 10. The preliminary project referred to in the preceding article shall be submitted to an investigation concerning the propriety or necessity of the execution of the work, in which shall be heard—

First. All those individuals who may be interested in the work, for which purpose it shall be exhibited in the office of the Secretary of the General Government for a period which shall be announced in the Boletines Oficiales of the respective provinces, and which shall be not less than thirty days.

Second. The Municipal Councils and the Deputations of the localities and provinces affected by the work.

Third. The Boards of Agriculture, Industry, and Commerce of the said Provinces.

Fourth. The military authorities, the naval authorities, and the Provincial Health Boards in special cases in which it is necessary, because demanded by the nature of the work.

Fifth. The Engineers in charge of the service and the Chief Engineers of the Provinces, so that they may make explanations concerning the claims which may have been made during the investigation.

Said investigation shall be sent in each province by the Governor of the same to the Governor-General of the Island, with his own opinion, and he, after hearing the General Inspection of Public Works and the Consulting Board of the Island, shall send it with his report to the Colonial Secretary.

All the above named documents shall be sent to the Consulting Board of Roads, Canals, and Ports for the proper report thereon.

(Articles 20 and 22 of the Law.)

ART. 11. If, in view of the result of the investigation referred to in the preceding article, it may be deemed convenient or necessary to execute the work in question, the Colonial Secretary shall present to the Cortes the form of law which in this case is necessary, in order to

undertake the work, in accordance with the provisions of Article 20 of the general Law of Public Works. When this authorization has been once granted, the final study shall be made, which shall follow the proceedings set forth in Articles 3 to 7 of the present Regulations.

(Articles 20 and 22 of the Law.)

ART. 12. If the work should be of admitted urgency, after the requisites provided by Article 20 of the Law shall have been fulfilled, the Colonial Secretary shall decide upon the immediate drafting of the project, without waiting for the making of the estimate of the studies referred to in Article 4 of these Regulations, without prejudice that, as soon as possible, the said estimate shall be made and sent for superior approval.

(Articles 20 and 22 of the Law.)

ART. 13. In fulfillment of the provisions of the general Law of Public Works, the Government shall not include in the general budgets—

First. The credits necessary for the preservation of all existing works in charge of the State, in view of the estimates which the General Inspectors of Public Works, through the General Government, must annually send for this purpose, as provided by Article 8 of these Regulations.

Second. The credits demanded by the repair of said works, according to the estimates mentioned in the same article.

Third. The amounts necessary for new works, the execution of which is properly authorized in accordance with Articles 20 and 21 of the general Law, and the projects of which are properly approved; said amounts shall include the probable expenses of condemnation proceedings, drainage, and other matters referred to in Article 6 of the present Regulations.

Fourth. The sums which may be reasonably judged necessary to carry out the projects of new works, and of repairs which might have been studied during the corresponding economic year.

Fifth. The amount for the works which it might be necessary to execute because of admitted urgency, in accordance with the provisions of said Article 20 of the general Law.

(Article 21 of the Law.)

ART. 14. The Colonial Secretary shall decide on the method which must be followed in constructing a public work in charge of the State, subject to the provisions of Article 24 of the general Law, and also, in a proper case, to the provisions of the Royal Decree of the 5th of May, 1876, after the Engineers, who may have drawn the project, shall have been heard, as well as the Chief Engineer of the Province or of the proper service, and of the Consulting Board.

(Article 24 of the Law.)

ART. 15. If the work should have to be executed by the method of management, it shall be constructed by the Engineers of Roads, Canals, and Ports, in accordance with the provisions which exist or might exist in this branch of the service.

If the work shall have to be carried out by the method of contract, the Engineers of the State shall have the right to superintend the construction, in order to see that the special conditions are carried out, make the provisional and the final acceptance, as well as the final estimate; all of which is prescribed by the Regulations of the service.

(Article 29 of the Law.)

ART. 16. If the work shall have to be executed by contract, the public bidding which shall precede it shall be made in accordance with the provisions existing for the contracting for such public service and the Regulations established for that purpose, for those which specially belong to the Colonial Department.

ART. 17. In the construction of every public work which shall be carried out by the contract method, and in accordance with the first of the methods indicated in Article 25 of the general Law, there shall govern—

First. The general conditions established, or which in the future may be established, for all kinds of contracts for public works in charge of the Colonial Department.

Second. The technical conditions which form part of the project and which have been approved, together with the latter.

Third. The particular and economic conditions which in each case the Colonial Department or the Governor-General may establish, in which shall be stated in detail, besides the special clauses which the nature of each contract might demand, the guarantee which is to be given by the contractor as security for the carrying out of his obligations, the times, manner, and places in which payments are to be made, the dates on which the work shall be begun and finished, and the time for which the contractor has to guarantee and be responsible for the solidity and stability of the executed works.

(Article 25 of the Law.)

ART. 18. The studies of projects and the execution of works which are included under the classification of civil constructions devoted to service depending on the Colonial Department shall be carried out in accordance with the provisions of this chapter concerning public works in general, without other distinction than that the architects who shall have charge of said construction, shall do the work which in the other case is in charge of the Engineers of Roads, Canals, and Ports.

(Article 28 of the Law.)

CHAPTER II.

CONCESSIONS FOR THE CONSTRUCTION WITHOUT SUBSIDY OF WORKS INCLUDED IN THE GENERAL PLANS OF THE STATE.

ART 19. Concessions of public works in charge of the State which are included in the plans of the same, and which are asked for without aid or subsidy of any kind, shall be made by the Colonial Department

to the companies or individuals who may request them, after the proceedings laid down by these Regulations.

(Article 53 of the Law.)

ART. 20. The granting of every concession mentioned in the preceding article shall only be after the drafting of the proper project.

If there is no project drawn by the Engineers of the Government for the work in question, it may be left to private initiative to make the studies, as provided by Article 56 of the general Law of Public Works.

(Article 56 of the Law.)

ART. 21. In the case of the preceding article, the individual or company that may desire to draw the project, shall petition the Colonial Department asking for the proper authorization, which may be given him after he has made a guaranty to pay for the damages which his operations may cause, the amount of which may be fixed, keeping in mind the importance of the project and the special circumstances of the ground which it is to occupy.

In case the authorization is granted, a period shall be fixed for the presentation of the project, the order being published in the Gaceta de la Habana and the Boletines Oficiales of the interested provinces.

The petitioner to whom this authorization is granted shall enjoy all the advantages which in such cases are granted by Article 56 of the Law, and shall present the project to the Colonial Department or the General Government within the limited time. If this is not done, the authorization which has been granted shall be considered annulled, unless the petitioner shall have asked for and obtained an extension of time for this purpose, which shall only be granted once, all petitions for further extension being ignored.

The guaranty shall be returned to the petitioner when he presents the project, after a certificate showing that he has satisfied all damages which he may have occasioned.

Every individual or company may for itself study the projects of works included in the plans of the State without the authority referred to in Article 56 of the general Law, but in such case it shall have no right to the advantages granted by said article.

(Articles 55 and 56 of the Law.)

ART. 22. The projects drawn by individuals for works referred to in the preceding articles shall consist of the same documents and be drawn in accordance with the same forms and provisions which are demanded for the works of the State, as provided by Article 6 of these Regulations.

(Article 55 of the Law.)

ART. 23. On presenting a project to the Colonial Department or to the General Government, the individual or company that shall have drawn it shall also present, as a guaranty of the fulfillment of his or its obligations, the document which shows that he or it has deposited in the proper place an amount equivalent to 1 per cent of the total esti-

mate for the execution of the work. The General Office of Administration and Public Works of the said Department or the Secretary of the General Government of the island, shall give a receipt for the project to the interested party, stating the day and the hour on which it may have been presented. This receipt shall constitute prima facie proof for every question of priority which may arise in the course of the proceedings.

(Article 57 of the Law.)

ART. 24. The project shall then be sent to the Chief Engineer of the Province, in order that he may go over it on the ground for the purpose of determining exactly the facts which it contains. The expenses which this may entail shall be paid by the petitioner, who shall deposit their amount in the Treasury of the Province or in the General Treasury of the island before this work is begun.

Of the result of the comparison, as well as of the other details of the project, the Engineer shall give a detailed report, which shall be sent to the respective Governor, to be attached to the other papers.

Thereafter an investigation shall be made directly by the Governors of the interested Provinces, concerning the propriety of making the concession, and concerning the proposed rates for the use and profit of the works. In this investigation individuals who might consider themselves interested shall be heard orally, and they may be compelled to answer interrogatories which may be specially framed for each particular case. Thereafter the corporations and officials who, according to the importance and nature of the works, it may be deemed convenient to consult, shall be heard in writing; and in all cases there shall be heard the Provincial Deputations and the Chief Engineers of the corresponding Provinces or services.

The Governors shall send the reports, with their own opinions, to the Governor-General, who, with his opinion, and after complying with the proper legal steps, shall send it to the Colonial Secretary, enclosing the projects which he may have received from the Chief Engineers.

(Article 58 of the Law.)

ART. 25. When the project refers to ports, besides the formalities established in the preceding article, those shall be observed which are established for this purpose by the special Law of Ports and the Regulations for its execution.

(Article 58 of the Law.)

ART. 26. On fulfilling the provisions of the preceding articles, the Consulting Board of Roads, Canals, and Ports shall be heard, which shall give an opinion concerning the project and the rates, and the basis on which they may have made an investigation.

When these formalities have been complied with, the concession may be granted, if proper, in view of the result of the proceedings, by means of a Royal Decree through the Colonial Secretary drawing the proper instrument, which shall be delivered to the concessionaire.

(Article 58 of the Law.)

ART. 27. No variation or modification whatever shall be introduced in the approved project for a concession of this class, without the proper authorization of the Colonial Secretary, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

(Article 58 of the Law.)

ART. 28. In every concession, besides the technical conditions of the project for the execution of the work and those of the general ones which may be applicable, there shall govern other particular conditions, in which shall be included the special ones which govern contracts of public works which may be considered proper, according to the result of the proceedings; and there must appear among them the following:

First. The designation of the guaranty which the concessionaire shall give in security for the fulfillment of his obligations. This guaranty shall be from 3 to 5 per cent of the amount of the estimate, and shall not be returned to the interested party until he has proved the construction of the works and the supply of materials to the value of one-third at least of the total cost of the work, according to appraisement made by the Engineers in charge of the superintendence of the work, applying to those which may have been made the prices of the approved estimate.

The guaranty in every case shall be made where contracted, within the term of one month from the date of the granting of the concession, on the penalty of the loss by the concessionaire of all right, including that of the deposit, if this shall not have been done.

Second. The dates on which the concessionaire shall commence and complete the works, as well as the progress with which they shall be constructed in given periods, in order that they may be concluded within the time provided for.

Third. The schedule of rates which may have been approved for the use and profit of the works, as well as the basis for their application.

Fourth. The time during which the concessionaire shall have the right to enjoy the proceeds of the rates referrred to in the preceding article, which can not exceed ninety-nine years.

Fifth. The cases of forfeiture of the concession.

Besides this, it must be seen that the concession shall be granted without prejudice to the third party and saving private rights.

(Articles 59 and 66 of the Law.)

ART. 29. Every concession of this kind shall be forfeited if any of the special conditions designated in the preceding article are not complied with, if the preservation of the works during their operation is not properly attended to, and if the operation is not carried on in accordance with the terms agreed upon.

The case provided in Article 60 of the general Law of Public Works shall also be a case of forfeiture.

The declaration of forfeiture shall be made by the Colonial Department, after proceedings in which there shall be heard the concession-

aire, the Consulting Board of Roads, Canals, and Ports, and the Colonial Department of the Council of State. From this decision the interested party may appeal by means of the administrative jurisdiction of contests.

(Articles 59 and 67 of the Law.)

ART. 30. When the forfeiture of a concession has been declared, the Engineers who may have been designated by the Governor-General, shall proceed to make an estimate of the works completed and the materials furnished and their valuation, according to the prices of the approved estimates.

The measurement and the valuation, accompanied by an explanatory memorial and plans which show the state in which the works are found at the time, shall be sent to the Colonial Department for its approval, after report of the Consulting Board of Roads, Canals, and Ports.

(Article 67 of the Law.)

ART. 31. To every concession which is declared forfeited, there shall be immediately applied articles 68 to 71, both inclusive, of the General Law of Public Works; and for the purpose of the public bidding on the executed works, the valuation made and approved in accordance with the provisions of the preceding article shall serve as a basis.

(Articles 68, 69, 70, and 71 of the Law.)

ART. 32. During the period set forth in Article 63 of the Law of Public Works, there shall be admitted in the General Government of the Island all the projects presented by individuals or companies to carry on the work, the concession of which may have been requested.

In said case, in order that the projects may be admitted, they shall be accompanied by a document which proves that the deposit of 1 per cent designated in Article 23 of these Regulations has been made. The admitted projects shall be submitted to all the provisions of Articles 22, 24, and 25 of these Regulations.

(Article 63 of the Law.)

ART. 33. When more than one project shall have been presented for the same work, there shall be a comparison on the ground made for each one of them; and the investigations provided by Article 24 shall include the advantages or disadvantages which may result from their comparison, in order to ascertain which is preferable. The same object shall be kept in mind by the Consulting Board of Roads, Canals, and Ports, or by the Royal Academy of San Fernando, as the case may be, on investigating the proceedings of the concession in the manner provided by Article 26.

When the report shall have been made by the proper Corporation, the proceedings shall pass to the Colonial Department of the Council of State, and after this requisite has been complied with there shall be decided by Royal Decree the preference which shall in each case be given to one of the several competing projects, in order to grant its author the concession requested.

The petitioner or petitioners whose projects shall have been rejected shall have no right to any claim or indemnity whatsoever.

(Article 61 of the Law.)

ART. 34. When, from the investigations instituted, there should result an equality among the conditions of two or more projects presented for the same work, the concession shall be made after public bidding and on the basis of the project which shall first have been presented to the Colonial Department or to the General Government of the Island, excepting the modifications introduced therein in consequence of examinations which shall have been made in compliance with the provisions of these Regulations.

The petitioner of the first project shall in such case show his acceptance of the modifications introduced and his consent to the bidding. If he shall refuse to do either, his project shall be ignored and it shall be returned to him, together with the deposit which he may have made.

Then the person who presented the second project shall have this privilege, and so on, observing the same procedure; and if none of the petitioners signifies his acceptance, it shall be declared that there will be no grant of the concession.

(Article 61 of the Law.)

ART. 35. When the Colonial Department shall have once decided that the concession be granted after public bids, before announcing the sale, the project which shall serve as the basis of the bidding, in accordance with the provisions of the preceding article, shall be appraised.

The appraisement shall be made independently by experts named, one by the Governor-General of the Island and the other by the interested petitioner. In case of disagreement, a third shall be named by agreement of these two; and if this agreement can not be reached, the appointment shall be made by the proper judicial authority.

In the appraisal there shall be included the material expenses of all kinds occasioned by the drawing of the project, and also the proper interest on the principal advanced to pay for these expenses. To the appraisal thus made, shall be added the fees of the experts. When the appraisal has thus been made, it shall be sent for the approval of the Colonial Secretary, who, before rendering a decision, shall hear the Consulting Board of Roads, Canals, and Ports.

(Article 62 of the Law.)

ART. 36. When the amount of the value of the project has been determined, the public sale of the concession shall be announced for a period determined by the Colonial Secretary; and at this sale there may take part not only the authors of the projects presented, but also all those who may desire the concession, providing they show that they have made the deposit of one per cent of the estimate of the works.

The bidding shall take place in Havana in the office of the General Government, and shall be based in the first place on reductions in the schedules of rates of the concession which may have been fixed, in the manner prescribed by the third paragraph of Article 28.

The proposals shall be sealed, and in strict accordance with the form which shall be presented, wherein shall appear in writing the per cent of reduction which the bidder agrees to make on the amount fixed for the sale, this percentage being the same and the only percentage for all parts of the schedule.

When the propositions presented shall have been read, the person who signed the one offering the greatest reduction shall be declared the best bidder, and a minute of the sale shall be made, which shall be sent for the approval of the Colonial Secretary.

(Article 62 of the Law.)

ART. 37. If from the reading of the propositions it should appear that two or more equally advantageous ones have been presented, there shall immediately be a new open bidding, in which only those shall take part who have signed equal propositions. This bidding shall be based on the reduction of the number of years which, in accordance with paragraph 4 of Article 28 of these Regulations, shall have been fixed for the concession, and shall last at least fifteen minutes, after which it shall terminate when the President so orders, after having given warning three times.

(Article 62 of the Law.)

ART. 38. In all matters not expressly modified by the preceding articles, the instructions approved the 11th of September, 1869, for the conduct of public biddings for public service and works of the Colonial Department in the Island, shall govern, it being understood that the deposit to take part in the bidding shall only be required from those who are not authors of projects previously presented and not withdrawn or returned for lack of fulfillment of the requisites referred to in Article 34 of these Regulations.

The petitioner whose project shall serve as the basis of the bids, shall reserve the right in all cases of preference on equal terms, and, in consequence thereof, of being declared the person to whom the concession is awarded for the amount which shall have been offered by the best bidder. In order to exercise this privilege he shall take part, either personally or by representative duly authorized, in the bidding, which shall be extended for half an hour, in order that the interested party may make the proper declaration, which, in a proper case, shall be stated in the minutes of the bidding. If this half hour shall elapse without a declaration being made, it shall be understood that the petitioner renounces the right to preference on equal terms, and the President shall declare the best bidder the signer of the proposition which is most advantageous.

(Articles 62 and 72 of the Law.)

ART. 39. If the person to whom the award is made shall not be the signer of the proposition whose project shall serve as the basis of the bids, he shall be obliged to pay the latter, within the period of one

month, the amount of the appraisal of the project made in the manner prescribed by Article 35 of these Regulations.

(Article 62 of the Law.)

ART. 40. When one of the concessions included in the present chapter of these Regulations shall be granted, Engineers of the Government shall have the supervision of the execution of the works, in order that they may be constructed in accordance with the approved plans. In the same manner they shall have the supervision of the inspection before the work is turned over to the public service, making a minute of this inspection, which shall be sent to the Colonial Department through the Inspection of Public Works and the Governor-General of the Island; and, lastly, they shall supervise the operation, in order that this may be carried out in accordance with the stipulated conditions.

(Article 64 of the Law.)

CHAPTER III.

CONCESSIONS TO EXECUTE WITH SUBSIDY WORKS IN CHARGE OF THE STATE.

ART. 41. When a work included in the plans of the State is in question, by the method of concession to individuals or Companies, and with a subsidy in any of the manners provided in Article 73 of the general Law of Public Works, the provisions of articles 20 to 25 of these Regulations shall be observed in relation to the plans.

The investigations provided for in article 24 shall be applied in this case to the necessity of the subsidy and the amount of the same.

The project, with the schedule of rates proposed for the use and profit of the work, and the investigations which shall have been made in the proceedings, shall be then sent to the Consulting Board of Roads, Canals, and Ports, for the final decision of the Colonial Secretary concerning the approval of the plans and proceeding to draw the basis for the grant of the concession and the collection of the means specified in the schedules, as well as the special conditions as to the powers mentioned in Article 28 of these Regulations, in regard to all of which the petitioner must express his acceptance.

In the same manner the kind of subsidy, its amount, and the times and manner in which it shall be paid to the concessionaire, in accordance with what may be determined on, shall be fixed according to the nature of the works and the special laws and Regulations for their execution.

(Articles 75, 76, and 77 of the Law.)

ART. 42. When the bases of the concession have been agreed on and mutually accepted, the appraisal of the accepted project shall be made, which shall be done in the manner provided by Article 35 of the Regulations.

(Article 77 of the Law.)

ART. 43. With the facts referred to in the two preceding articles, the Colonial Secretary shall present to the Cortes the form of law for the granting of the concession.

When the law is promulgated the concession shall be offered at public auction for the period of three months. No one may take part in these auctions except those who prove that they have made the deposit of 1 per cent of the estimates as a guarantee of the fulfillment of the offers which they make. The approved estimate shall serve as the basis of the bids, which shall be made on the reduction of the amount of the subsidy.

The bidding shall be made in accordance with the existing rules, and the signer of the most advantageous proposition shall be declared the best bidder, a memorandum being made thereof, which should be submitted for the approval of the Colonial Secretary.

(Articles 77, 78, and 79 of the Law.)

ART. 44. In case of equal proposals concerning the amount of the subsidy, another bidding shall be made within the period of ten days by means of sealed bids.

In this bidding only those who have signed the propositions which appear equal shall take part, whose deposits shall be retained. This second bidding shall take place on the basis of the reduction of the schedule of rates, in the manner provided for by Article 36. If in this auction no bid whatsoever shall be made, or if there should again result an equality of the best propositions, there shall immediately be an open bidding made, based on a reduction in the time of the concession, in the manner provided for by Article 37. If the proposer should not make any bid at this open bidding, the one who shall have drawn the lowest number referred to in Article 13 of the instructions of the 18th of March, 1852,[1] shall be declared the best bidder; this drawing by lot shall be made before the same auction board referred to in the preceding article of these Regulations.

(Article 78 of the Law.)

ART. 45. The petitioner whose project shall have served as the basis for the auction, in case he shall not have been declared the best bidder, shall reserve the right of preference on equal terms, of which he may take advantage, thus declaring at the time of the bidding, in the same manner as is provided in Article 38 of these Regulations. In such case the bid shall be awarded him and the concession shall be granted to him.

If the petitioner does not take advantage of this right, the bid shall be awarded and the concession shall be granted to the best bidder; but in such case the latter shall be obliged to pay to the petitioner who presented the approved project, within the term of one month, the amount of the appraisal made in the manner provided by Article 42.

(Article 78 of the Law.)

ART. 46. When the concession is granted, the concessionaire shall deposit in the proper place the guaranty for the security of the fulfill-

[1] See Art. 13 of the Instructions of the 13th of February, 1852.

ment of his obligations. This guaranty shall in such case be an amount equivalent to 5 per cent of the estimate of the works included in the approved plan.

The guaranty shall be made within fifteen days, counting from the date on which the interested party is notified of the granting of the concession, for which purpose he must give a receipt which shall show the date on which such notice was given him.

If the concessionaire allows the time fixed to elapse without having deposited the guaranty, the award shall be declared without effect, the concession being again open to public bids for the period of forty days, and the interested party forfeiting the deposit of 1 per cent.

The guaranty referred to in this article shall not be returned to the concessionaire until the day when, being finished, the works shall be turned over to the public service, after the proper authorization to that effect.

(Art. 80 of the Law.)

ART. 47. No modifications can be introduced in the approved project for subsidized works without the prerequisites demanded by article 82 of the general Law of Public Works, the consequences of such variations being set forth in article 84 of the same Law.

(Articles 82 and 83 of the Law.)

ART. 48. The concession of a subsidized work shall be forfeited whenever its stipulations shall not be complied with. The forfeiture shall in such case be declared by Royal Decree issued by the Colonial Secretary, and it shall not be decreed without previous proceedings, in which the interested party shall be heard, and in which the Consulting Board of Roads, Canals, and Ports and the full Council of State shall report.

Every forfeiture shall carry with it the loss of the guaranty given by the concessionaire, to whom there remains the appeal by way of the administrative jurisdiction of contests, in order to make such claims as may be deemed proper, according to the provisions of article 87 of the general Law of Public Works.

(Articles 84 and 87 of the Law.)

ART. 49. In case of force majeure, the Colonial Secretary may grant an extension for the completion of the works, in conformity with the provisions of paragraph 2 of article 85 of the Law. In order to grant it, a second proceeding shall be necessary, which shall serve as the basis of a petition of the concessionaire, stating the reasons on which the request is founded and indicating the duration of the extension.

When the petition of the concessionaire is presented to the Governor-General of the Island, it will be sent to the governors of the provinces in which the work is to be done according to the project, and the governors will hold an investigation, in which shall be heard the Provincial Deputations, the Board of Agriculture, Industry, and Commerce of the place, where the work is situated, and the Chief Engineers of the Provinces or service to which the works belong.

There shall also be heard the officers and Corporations that the Colonial Secretary shall designate, as the case may demand.

The investigation shall deal with the facts stated by the concessionaire in his petition and the other facts which the Governor-General shall deem pertinent in connection with the matter. The Chief Engineers shall, moreover, discuss the question and state whether, in their opinion, the time requested is considered sufficient or excessive for the termination of the works which still remain to be executed.

The proceedings shall be sent by the Governor-General, with his own opinion and that of the General Inspection of Public Works, to the Colonial Secretary, who, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports and the full Council of State, shall decide upon the requested extension.

In no case shall the extension be granted for a number of years greater than that which, according to the stipulations of the original conditions of the concession, shall elapse between the beginning and the termination of the works.

(Article 85 of the Law.)

ART. 50. In case the operation of the subsidized work shall be interrupted, the provisions of Article 86 of the general Law of Public Works shall be followed.

(Article 86 of the Law.)

ART. 51. When the forfeiture of a concession is declared, the Engineers of the State shall proceed, at the expense of the concessionaire, to the appraisal of the executed works, according to the provisions of Article 88 of the Law, and of Article 30 of these Regulations, concerning concessions without subsidies.

When this appraisal has been made and duly approved, the biddings referred to in Articles 88 and 89 of the said general Law shall be proceeded with, the said appraisal serving as the basis therefor, and the proceedings following the provisions of Articles 90, 91, and 92 of the same Law.

(Articles 88, 89, 90, 91, and 92 of the Law.)

ART. 52. Articles 32 and 33 of these Regulations, concerning the admission of projects for the same work and the selection by the Colonial Secretary of those which offer the greatest advantages, shall be applicable to the case of a petition for subsidized concessions. The same is true of Article 34, concerning the acceptance by the petitioners of the modifications which the superior authority may deem proper to introduce in the projects for the bases of the concession. In view of all these proceedings, there shall be declared which of the projects presented is the one which shall serve as the basis for the biddings; it being always understood that, in case of equality of all other circumstances, this declaration shall be made in favor of the project which was first presented.

(Article 78 of the Law.)

ART. 53. When the project which shall serve as the basis for the public bidding shall be determined on, the proceedings shall follow the provisions of the various articles of this chapter for cases in which there is only one project, and the signer of the one selected shall have the rights which are reserved to him by Article 45 of these Regulations.

(Article 78 of the Law.)

ART. 54. When, at the cost of the State and according to the provisions of Article 26 of the general Law of Public Works, a work shall be executed for the use and profit of which rates have been established, the operation shall be carried on by contract, in accordance with the provisions of this chapter, in so far as they may be applicable to this case.

Nevertheless when, after the proceedings prescribed by said article of the Law, it is declared convenient that the operation shall be carried on at the expense of the State, said operation shall be made by management and in accordance with the special instructions which in each case shall be given by the Colonial Secretary.

(Article 26 of the Law.)

ART. 55. Besides the supervision which the Engineers of the Government shall exercise over the execution of the works and their operation, as provided by Article 40 of these Regulations, concerning works without subsidy, said officials shall, in the cases included in this Chapter III, examine into the conditions under which the concessionaire shall receive the subsidy, so that in this connection the stipulations shall also be strictly carried out.

TITLE SECOND.

PROVINCIAL WORKS.

CHAPTER IV.

PROJECTS AND EXECUTION OF WORKS BY ORDINARY CONTRACTS.

ART. 56. The roads and ports for their respective territories which are of merely provincial interest, and the sanitation of lakes and marshes referred to in the third paragraph of Article 5 of the Law, are in charge of the Provinces, in accordance with Article 5 of the general Law and the special law of Public Works.

The plans of the works which are to be in charge of the corresponding Deputations shall be made as determined by the Regulations for the execution of the special law of Public Works.

(Articles 5, 9, and 33 of the Law.)

ART. 57. When the plans of the works which are to be in their charge are made by the Deputation of a Province, they shall be sent to the Colonial Department by the Governor-General, with his report, showing the reasons therefor.

His approval, if proper, shall be made by Royal Decree, published by the Colonial Secretary.

(Article 33 of the Law.)

ART. 58. When the plans of the works of the Provinces have been once approved, the order of preference fixed for them shall not be changed in the execution thereof, unless after a proposal of the Deputation assigning reasons therefor, which shall be submitted to the report of the Municipal Councils of the towns interested in the proposed works and of the Chief Engineer of the Province.

The Governor shall send the proceedings, with his report, to the Colonial Secretary, who shall decide on the proposal by means of a Royal Decree, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

(Article 33 of the Law.)

ART. 59. Before the execution of any work included in the plan of a Province, there shall first be a resolution of the Deputation, which shall in such case order the Engineer or his assistant in charge of provincial works to proceed to the study of the respective project. This project shall follow in its draft the same formulas prescribed for the works of the State, and when it has been once finished shall pass for the report of the Chief Engineer of the Province.

When this report is made, if it should be favorable, the Deputation may approve the project, or otherwise adopt the necessary measures for its modification, in accordance with the report which may be made by the Engineer.

If the Deputation is not satisfied with the report made by the Chief Engineer, it shall send the project to the Governor-General, in order that it may be submitted to the superior authority, the Colonial Department deciding in such case by means of a Royal Decree, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

(Article 15 of the Law.)

ART. 60. When the execution of a work of those included in the plan shall be decided on by the Deputation, and the project approved in the manner indicated by the preceding articles, the necessary credit for its execution shall be included in the provincial budget.

The work may be carried on by management or contract, which shall be decided on by the Deputation after hearing the opinion of the expert in charge of provincial works on this point.

(Articles 35 and 38 of the Law.)

ART. 61. If the works shall be executed by management, it shall be directed by the technical agents of the Deputation and in accordance with the instructions which these may give, with the approval of the provincial corporation.

If it shall be made by contract, this can not be carried out without public bidding, in accordance in all respects to what is prescribed for

similar cases by the laws for the works in charge of the State, in Chapter I of these Regulations.

(Articles 38 and 39 of the Law.)

ART. 62. When a work which is not contained in any of the plans of the province is in question, and it is nevertheless deemed necessary to execute it before the above-mentioned plans, there must in all cases be first made the declaration referred to in the second paragraph of Article 35 of the general Law of Public Works.

For this declaration the proceedings to be followed, shall be started on the proposal of the Provincial Deputation made to the Governor, which must be accompanied by the project of the work in question. The Governor shall submit this proposition to the same proceedings to which the formation of plans of provincial works are subject, thereafter sending them, with his own report, to the Colonial Secretary through the Governor-General.

The proceedings shall pass for the report of the Consulting Board of Roads, Canals, and Ports, and shall finally be decided by means of a Royal Decree concerning the requested declaration.

The information above mentioned shall not be necessary when there shall have been promulgated a law authorizing the execution of the work.

In case the work be of such nature as not to correspond with those which, according to special laws, are covered by the plans of the provinces, after the investigation shall have been made, there shall be presented to the Cortes, by the Colonial Secretary, a form of decree, in order that its execution may be authorized by the legislative power.

(Article 35 of the Law.)

ART. 63. There shall precede in all cases, the concession of public domain and the declaration of public utility, to the execution of every provincial work which is not included in the respective plans, in accordance with the provisions of the general Law of Public Works, and according to the proceedings prescribed by title fourth of the present Regulations. Exception is made of the cases provided for in the previous article, when the authorization should have been or shall be granted by law.

(Article 35 of the Law.)

ART. 64. The works of repair and of preservation of the provincial works shall be carried out in accordance with the credits, which for this purpose shall be included in the budgets of the Deputation as obligatory expenses. The experts in charge of public works shall make an estimate of the repairs, approval of which shall always precede their execution, as well as the annual estimates for preservation, which shall be indispensable and sufficient for the existing works of the province which are in charge of the Deputations. The amounts calculated by the technical officials for such objects shall be necessarily included among the obligatory expenses.

(Articles 14 and 41 of the Law.)

ART. 65. When the work which is to be executed may be the subject of operation with profit, the Deputation shall make the list of rates which it considers proper to establish for its use and profit, and shall send it to the Governor of the province. The latter shall send it to the General Government with his own report, after hearing the Chief Engineer of the province, and the Governor-General, after the report of the Inspection of Public Works, shall forward it with his own to the Colonial Secretary. The approval of the establishment of rates and of the instructions for their application shall be made by means of a Royal Decree by the said Department, with the consent of the Council of Secretaries.

(Article 37 of the Law.)

ART. 66. The appointment of an expert or experts, who shall be charged with the direction of provincial works, shall be freely made by the Deputation; but this appointment shall always be of individuals who shall be Engineers of the Corps of Roads, Canals, and Ports, or at least Assistants of Public Works. In each case the salary, as well as the indemnity which shall be given to said officials for the expenses arising from the service, shall be paid from the provincial funds.

(Article 39 of the Law.)

ART. 67. In the same manner the Deputation shall have the right, in the form in which it may be deemed convenient, to organize the subordinate personnel of all kinds which may have to aid the Chief Expert in carrying out his duties, as well as the appointment of this personnel, all being at the suggestion of the said Chief.

(Article 39 of the Law.)

ART. 68. The Engineers of Roads, Canals, and Ports, who may be named by the Deputation for the direction of the service of provincial works, shall preserve all their rights under the Regulations as individuals of the Corps to which they belong, in the same manner as if they were in the service of the State.

Similar rights shall be enjoyed by the Assistants of Public Works who may be named for the same duties, and the same benefit shall inure to the overseers of the said branch who may form part of the subordinate personnel of the provincial service.

(Article 39 of the Law.)

ART. 69. The public works which are executed at the instance of the Provincial Deputation shall be executed under the inspection, in the technical branch, of the Colonial Department and the Governor-General. For this purpose the Governor may order that they be inspected during their construction by the Chief Engineer of the province, whenever he may deem this opportune.

Besides these extraordinary inspections, the Chief Engineer shall annually make other ordinary inspections of all provincial works.

The Engineer shall report the result of his inspections to the Governor of the province, and if any difficulty is noted in the works he shall so inform the latter.

The Governor, in view thereof, shall give his orders to the Deputation, in order that the difficulties may be corrected. If the Deputation should refuse to do so, or deem it proper to appeal from the decision of the Authority, the proceedings shall be carried to the Colonial Secretary, in order that he may decide the question, after first hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

The Chief Engineer shall also send to the General Inspection of the Island copies of the reports sent to the Governor, informing the Inspection of all the incidents of this service.

The expenses of any kind which may be caused by the inspection of provincial works shall be charged to the corresponding Deputations.

(Article 42 of the Law.)

ART. 70. Without prejudice to the inspections referred to in the preceding article, every provincial work shall be necessarily inspected by the Chief Engineer of the Province, or by the State Engineer who may be designated for this purpose, before turning it over to public use, and when the Deputation declares that it is terminated.

For this purpose, when such case is believed to have arisen, the Deputation shall inform the Governor, who shall order that the Chief Engineer make the inspection. Said Engineer shall report to the Governor the result of his commission, and if there are any defects found, proceedings shall be instituted in accordance with the case of the preceding article, the delivery of the work to the public service being suspended until the authorization of the Governor-General or of the Colonial Secretary shall have been given.

(Article 42 of the Law.)

ART. 71. The provisions of this chapter are applicable to works called civil constructions, devoted to the service of the Colonial Department, which are in charge of the province, without any other difference than that the plans shall be gone over, when the direction or inspection shall be made, by the proper Architects in accordance with the provisions of article 39 of the general Law.

CHAPTER V.

CONCESSIONS FOR THE EXECUTION OF PROVINCIAL WORKS.

ART. 72. Every public work in charge of a province which is included in the plans of the same, can be carried out by the method of concession to individuals or corporations who may so request it, after the proceedings which are established by the general Law of Public Works and those determined by the present Regulations.

(Article 53 of the Law.)

ART. 73. The concession of every provincial work included in the approved plans, shall be granted by the corresponding Deputation, whether a subsidy of any kind has been requested for its execution, or

whether in any manner whatsoever, aid from the provincial funds has been demanded.

(Articles 53 and 73 of the Law.)

ART. 74. In case the work is requested without subsidy, the petitioner shall present to the corresponding Deputation the project of the work which he desires to carry out. For this purpose he may request the Governor of the province for the authorization referred to in Article 56 of the general Law of Public Works, an authorization which, in a proper case, shall be granted with similar requisites to those referring to works of the State, as determined by Article 21 of the present Regulations.

The projects in all cases shall be drawn as provided for by Article 6.

(Articles 55 and 56 of the Law.)

ART. 75. Within the period designated by the Governor, the petitioner shall present the project to the Deputation, accompanied by a certificate which shows that he has delivered in the depository of provincial funds an amount equivalent to 1 per cent of the estimate.

The Secretary of the Deputation shall give the interested person the proper receipt, stating the day and the hour on which he received the project.

(Article 57 of the Law.)

ART. 76. The project shall be sent to the Chief of the technical service of provincial works, in order that he may go over it on the ground. The said Chief shall investigate concerning the exactness of the facts stated in the project and concerning all the technical details, making his report to the Deputation.

This corporation shall then send the project to the Chief Engineer of the Province, in order that he may make report concerning it, in the manner determined by Article 59 of these Regulations, in accordance with which the further proceedings shall follow the provisions necessary for the approval of the project by the Deputation, as if in case of a disagreement between it and the Chief Engineer.

When works in connection with ports are in question, there shall be followed, moreover, the provisions concerning the formation of plans established in the special law and determined by the Regulations for its execution.

(Article 58 of the Law.)

ART. 77. The projected schedules of rates which the petitioner proposes to establish for the use and profit of the work, shall be submitted by the Deputation to a public investigation, in which, for at least a period of ten days, there shall be heard claims of all those who consider themselves interested. After hearing the petitioner as to these claims, and lastly the Municipal Councils of the districts in which the work is to be executed, the Chief of the service of provincial works and the Chief Engineer of the province shall be heard.

When the proceedings are thus closed, the Provincial Deputation shall decide as to the granting thereof, by means of a resolution, which shall be published in the Boletin Oficial.

In this resolution, in the proper case, shall be inserted the essential conditions of the concession, which shall be those stated in the general Law of Public Works, and in Article 28, Chapter II, of these Regulations, for concessions of works in charge of the State.

From the resolution of the Deputation, in the proper case, the petitioner may appeal to the Governor-General of the Island and the Colonial Secretary, in the manner provided by the provincial law in force.

(Articles 58 and 59 of the Law.)

ART. 78. When the concession is granted and the proper guaranty is given, the concessionaire shall execute the works in strict accordance with the stipulations, and under the supervision of the technical officials of the Deputation and the inspection of the State Engineers.

The concession shall be forfeited in the cases prescribed in the conditions, and shall be declared, if there be proper reason for it, by the Deputation, after previous proceedings in which shall be heard the interested party, who shall reserve the right of appeal to the Governor-General and the Colonial Secretary from the resolution of said corporation.

In case an appeal is made, the Colonial Secretary shall decide, after hearing the Consulting Board of Roads, Canals, and Ports, the concessionaire having the right to appeal from this decision by means of the administrative litigation.

(Articles 8, 64, and 67 of the Law.)

ART. 79. The consequences of forfeiture and the proceedings which have to follow shall be those which are provided by Chapter II of these Regulations for similar cases in works of the State, it being understood that the appraisal of the works provided for by Article 30 shall be made by the expert agents of the Province, investigated by the Chief Engineer, and approved by the Deputation, with the right of appeal to the Government in cases of disagreement between them.

(Articles 68, 69, 70, and 71 of the Law.)

ART. 80. When there shall have been presented two or more projects for the execution of the same work within the period of thirty days, counting from the time in which the first petition was presented, the comparison referred to by Article 76 and other investigations of the proceedings shall be made in connection with all the projects presented, making a note of the advantages or disadvantages of each one. In this case the Deputation shall select, for the granting of the concession, the one which, in its opinion, offers the greatest advantages.

(Article 61 of the Law.)

ART. 81. In case there should result from the investigation an equality of circumstances between the projects presented, the Deputation shall resolve to proceed to a public auction on the basis of the proper

project, in accordance with the provisions of Article 34 for the concession of State works.

The appraisal of the project which shall serve as the basis of the bids shall be made by two experts, one named by the Deputation and the other by the petitioner, the third being named by both parties, and, in case of disagreement, by the proper judicial authority.

The appraisal shall be made on the basis designated by Article 35, and shall be submitted for the approval of the Deputation, which shall decide, after first hearing the expert in charge of provincial works.

(Article 62 of the Law.)

ART. 82. The bidding shall take place before the Deputation and shall follow the similar rules established for this purpose in articles 36 and 37, the President of the Board having the right to declare who is the best bidder, saving the approval of the said Corporation.

The author of the project which shall serve as the basis of the bidding reserves the right of preference on equal terms, and that of receiving the value of his project, according to the appraisal, in a similar manner to the provisions of Articles 38 and 39 of these Regulations.

(Articles 62 and 72 of the Law.)

ART. 83. When an individual or a company asks for the concession of a work included in one of the plans of the province, with subsidy or aid from the funds of the same, in so far as the presentation, proceedings, and approval of the project are concerned, the provisions of Articles 74, 75, and 76 of these Regulations shall be observed; and concerning the schedules for the use and benefit of the work, it shall be subject to the investigation prescribed by Article 77.

Thereafter the appraisal of the project shall be made, which shall be carried out as provided for this purpose by the rules established in Article 81.

(Articles 75 and 76 of the Law.)

ART. 84. In the case in which the Deputation shall have approved the project, the rates, and other documents of the proceedings, and provided that the petitioner accept the modifications which it may have been deemed convenient to introduce into them by reason of the result of the investigations, there shall follow the granting of the concession which is within the power of a provincial Corporation after public bidding, at which the approved project shall serve as the basis, and which shall take place before said Corporation, in a manner similar to that provided in articles 43 and 44 for the cases of works of the State.

In the same case the author of the proposal whose project shall have served as the basis of the bids, has the right of preference on equal terms and to the payment of said project, in accordance with provisions similar to those set forth in article 45.

(Articles 77, 78, and 79 of the Law.)

ART. 85. The guaranty shall be deposited in the depository of the Deputation, following in all respects the provisions of article 46 of these Regulations on this point.

Article 47, concerning modifications in projects, and article 48, concerning forfeitures, which in this case shall be declared by the Deputations in the form and with the same rights of appeal as those set forth in the second paragraph of article 78, and the provisions of article 79, are also applicable to concessions subsidized with provincial funds.

Article 49, concerning extension for the termination of the works, and article 50, concerning the interruption of the operation, are also applicable to the case referred to in the present article.

(Articles 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92 of the Law.)

ART. 86. When there shall have been presented two or more propositions to execute a provincial work with subsidy, within the time expressed by Article 80, the provisions of said article shall be applied for the selection of the project which shall serve as the basis of the bids, proceeding to the appraisal of said project, and thereafter following, for the carrying out of the bidding and subsequent proceedings, the rules established in Article 82 of these Regulations.

(Article 78 of the Law.)

ART. 87. When there shall have been executed at the expense of the Deputation a work which may be the subject of a profitable operation, this operation shall be carried on by contract, the concession thereof being awarded to the best bidder. The bidding shall take place in all respects in accordance with the provisions of this chapter for concessions of works without subsidy; and there shall serve as a basis for the bidding the schedule of rates made by the Deputation and approved in the manner indicated by Article 65.

If the provincial Deputation should request the operation referred to in this article, the proper proceedings shall be instituted, in which the Chief Engineer, the Governor of the Province, the Inspector of Public Works, and the Consulting Board of Roads, Canals, and Ports shall report concerning the propriety of the petition, in view of which the Colonial Secretary shall decide what he may deem proper.

(Article 37 of the Law.)

ART. 88. The officials or technical employees of the Deputation shall carry out the duties which belong to them for the works which are executed and operated in accordance with the stipulated conditions, and shall exercise the proper supervision, in order that the concessionaire shall not receive the subsidy, except at the times and in the manner provided for by the conditions.

(Article 81 of the Law.)

ART. 89. The Colonial Secretary shall have the final decision concerning the approval of projects, granting of concessions, declarations of forfeiture, and, in general, concerning all the proceedings relative to the provisions of the General Law of Public Works and of these Regulations, which belong to the Provincial Deputations when the works include two or more provinces and the Deputations of the said provinces do not agree.

(Articles 8 and 15 of the Law and chapters 6 and 7 of the same.)

ART. 90. The provisions contained in chapters 2 and 3, which refer to concessions of works of the State, and which have not been expressly mentioned in the present chapter, shall be applicable to concessions of provincial works, with the modifications required by the various cases, the questions which may arise in this connection concerning the application of these Regulations being decided according to the spirit of said provisions.

(Article 5 of the Law.)

TITLE THIRD.

MUNICIPAL WORKS.

CHAPTER VI.

PROJECTS AND EXECUTION OF WORKS BY ORDINARY CONTRACT.

ART. 91. Local roads, the supply of water, local ports, and the drainage of lakes and marshes of merely municipal interest are in charge of the Municipal Councils, in accordance with Article 6 of the general Law and the special laws of Public Works.

The plans of the works of the Municipal Councils shall be made in accordance with the provisions of the Regulations for the execution of the special laws of Public Works.

(Articles 6, 10, and 43 of the Law.)

ART. 92. The order of preference stated in the plan of the Municipal Council for the execution of the work can not be changed except by virtue of a proposal, giving reasons therefor, by the Municipality, which shall be duly approved by the Governor, after hearing the Provincial Deputation and the Chief Engineer.

(Article 43 of the Law.)

ART. 93. When a Municipal Council decides on the execution of a work included in the plan of the Municipality, the proper project shall first of all be made. This project shall be drawn in accordance with the terms then in force, and once drawn shall be presented to the Governor for approval, who shall grant it only after hearing the Chief Engineer of the Province.

The Governor, when works of great importance are in question, or when he is not satisfied with the opinion of the Chief Engineer, shall submit the project for the approval of the Colonial Secretary, who shall, before granting it, hear the Consulting Board of Roads, Canals, and Ports.

After the project is approved, the Municipal Council shall include in the Municipal budget the corresponding credit to carry out the work.

(Articles 17 and 43 of the Law.)

ART. 94. After the project of a municipal work has been approved, and the proper credit incorporated in the budget, its execution shall be proceeded with by the method of management or contract, as shall be

decided on by the Municipal Council after hearing the expert who shall have drawn the plan.

If the work shall be carried out by management, it shall be directed by said expert, in accordance with the instructions in force for municipal works. In case it shall be done by contract, the public bidding in the manner analogous to what is prescribed by these regulations for the works of the State and of a Province, is an indispensable prerequisite.

(Article 47 of the Law.)

ART. 95. When a work not included in the plan of a Municipality is in question, there shall first of all be made the project by the expert to whom the Municipal Council shall have deemed it convenient to intrust this work.

When the project is drawn it shall be submitted to a public investigation, at which shall be heard, within the time which for this purpose is designated by the Municipal Council, all individuals who desire to make any claim concerning the propriety of the execution of the work.

After this investigation is had, the Municipal Council shall send the proceedings to the Governor with its report concerning said claims, and said authority shall decide what may be deemed expedient, after hearing the opinions of the Provincial Deputation and the Chief Engineer. When the nature of the work requires it he shall also hear the Marine Authority or the Military Authority, the Provincial Board of Health, and the Board of Agriculture, Industry, and Commerce, as the case may be.

From the decision of the Governor the Municipal Council may appeal to the Governor General and the Colonial Secretary, who, after hearing the Consulting Board of Roads, Canals, and Ports, shall decide without further recourse.

(Article 45 of the Law.)

ART. 96. When a work which is to be executed affects two or more Municipal Councils, the decision concerning the proposal of preference indicated by Article 92, or the approval of the project referred to in Article 93, or the other points indicated in Articles 94 and 95, can not be made, unless the interested Municipal Councils shall have come to an agreement, and unless they have before them the complete project.

If there should be any difference of opinion between the said Municipal Councils, the Governor shall decide after hearing the Chief Engineer and the Provincial Deputation, the Municipality which may have considered itself prejudiced having the right of appeal to the Governor General and the Colonial Secretary. When the works affect towns belonging to different provinces, the proceeding shall be according to the last paragraph of Article 46 of the General Law of Public Works.

(Article 45 of the Law.)

ART. 97. For the construction of public works of any kind, Municipal Councils may call for the personal aid of the inhabitants whenever the

ordinary revenues, or any other income devoted to such objects, shall not be sufficient.

ART. 98. Municipal Councils may impose special taxes for the use and profit of the works which are executed and which are the subject of profitable operation. The amount of taxes shall be proposed by the Municipality in each particular case, submitting its proposal to the Governor, who, with his report, shall submit it to the Governor-General, and the latter, with his report, to the Colonial Secretary, who shall decide, by Royal Order, after hearing the Colonial Department of the Council of State, concerning the approval of the proposed tax, communicating the proper instructions for its application to the work in question.

(Article 46 of the Law.)

ART. 99. The work of preservation and repair of existing works in each Municipality shall be paid by the credits previously and necessarily designated for this purpose in the municipal budget, and always after these budgets have been drawn and approved by the proper Municipal Council.

(Articles 16 and 49 of the Law.)

ART. 100. The Municipal Councils may freely name the technical officials who are to intervene in the works under their charge, it being necessary that those selected shall have the proper professional degree which proves their ability.

The organization of the technical personnel, the management of municipal works, the fixing of the payments, and other matters relative to this part of the service shall be exercised by the proper Municipal Council, in accordance with the provisions of the laws and regulations in force.

Engineers of Roads and Overseers of Public Works who may be named by the Municipal Councils for the service of municipal works shall enjoy all the rights which are given them by the Regulations, as though they were in the service of the State.

(Article 48 of the Law.)

ART. 101. Public works in charge of Municipal Councils shall be inspected by the employees or technical officials of the State in a manner similar to that prescribed by articles 69 and 70 of the present Regulations for provincial works.

(Articles 8 and 50 of the Law.)

ART. 102. The provisions of this chapter are applicable to works called civil constructions devoted to municipal services, and which may be in charge of Municipal Councils, without any other difference than that of the experts in whose charge shall be the projects, direction, and supervision, according to existing legislation.

(Article 48 of the Law.)

CHAPTER VII.

CONCESSIONS OF MUNICIPAL WORKS.

ART. 103. The public works in charge of Municipal Councils which are included in the plans of the same, properly approved, can be the subject of concessions to individuals or Companies who may request them, in accordance with the provisions of the general Law of Public Works and of the present Regulations.

(Article 53 of the Law.)

ART. 104. The concessions to which the previous article refers shall be granted by the proper Municipal Councils, provided that no aid of any kind whatsoever is requested for them, nor any subsidy from the Municipal funds.

(Articles 53 and 73 of the Law.)

ART. 105. Whenever a concession of a municipal work without subsidy is requested, the petitioner shall present to the proper Municipal Council the project of the same. For this purpose he may request the Governor of the province to give the authorization referred to in Articlie 56 of the general Law of Public Works, proceeding as prescribed by Article 74 of these Regulations concerning provincial works.

(Articles 55 and 56 of the Law.)

ART. 106. The project shall be delivered to the Secretary of the Municipal Council, accompanied by a document which proves that the petitioner has delivered to the depository of municipal funds a sum equivalent to 1 per cent of the estimate of the works. The Secretary of the Municipal Council shall give a receipt for the project, in which shall appear the day and the hour on which it was presented.

(Article 57 of the Law.)

ART. 107. The expert in charge of municipal works, or the one whom the Municipal Council deemed proper to temporarily name for this special purpose, shall then proceed to go over the plan of the project on the ground and report in the manner provided for by Article 76 for provincial works. The Municipal Council shall send the project thus reported to the Governor of the province, who, after hearing the Chief Engineer, shall decide as to the approval of the project, in the manner prescribed by Article 96.

(Article 58 of the Law.)

ART. 108. The schedule of rates for the use and profit of the work shall be submitted for a period of fifteen days to a public investigation, under the direction of the Alcalde, in which all the inhabitants of the town who believe themselves interested may enter claims. The Alcalde shall then send this investigation to the petitioner, in order that he may answer; and shall further hear the expert in charge, and, with the opinion of the full Municipal Council, shall send the proceedings to the Governor. The latter shall decide concerning the approval of the rates

in the same manner as is provided for the project by the preceding article.

(Article 58 of the Law.)

ART. 109. After the project is approved and the basis of the contract agreed upon with the petitioner, the Municipal Council shall decide as to the granting of the concession by means of a resolution, in which a memorandum shall be made and which shall be communicated to the Governor for publication in the Boletin Oficial.

The essential provisions of these concessions shall be those provided by Article 28 of these Regulations for similar concessions of works of the State.

From the resolution of the Municipal Council the petitioner may appeal to the Governor, who, after hearing the Provincial Deputation, shall decide without further recourse. The periods for investigation and decision, and the form in which the appeal shall be made, are those designated for these cases by the Municipal Law in force in this island.

(Articles 58 and 59 of the Law.)

ART. 110. When the concession is granted, the concessionaire shall deposit from 3 to 5 per cent of the amount of the approved estimate, and proceed to the execution of the works under the immediate inspection of the technical officials of the Municipality, and the superior inspection of the State Engineers.

(Articles 50, 59, and 64 of the Law.)

ART. 111. The concession shall be forfeited in the cases provided in the stipulated provisions, and shall thus be declared in a proper case by the Municipal Council, after proceedings in which the interested party shall be heard, and with a right of appeal to the Governor in the same manner as is provided for in Article 109.

After the Governmental proceedings have been exhausted, the concessionaire shall reserve the right to appeal from the declaration of forfeiture of the concession, by administrative litigation.

When the forfeiture is finally declared, the consequences shall be the same as those provided for by chapter 2 of these Regulations for similar works in charge of the State, it being understood that the appraisal of the works executed, to which Article 30 refers, shall be made by the expert employees of the Municipal Council, the approval of the Governor being necessary in the same manner as for projects of municipal works.

(Articles 67, 68, 69, 70, and 71 of the Law.)

ART. 112. In case more than one project is presented for the same work within a period of thirty days, counting from the time the first petition is made, the comparison on the ground, referred to by Article 107, and other investigations of the proceedings, shall be made by comparison between the projects presented, discussing their respective advantages and disadvantages. When these proceedings are ended

the Municipal Council, in view of the result, shall select the project which, in its judgment, offers the greatest advantages, and send it for the approval of the Governor.

The Governor, having in view all the proceedings, after an opinion of the Chief Engineer, shall decide upon the approval in the manner determined by Article 93.

From the decision of the Governor, the Municipal Council, if it deems it proper, may appeal to the Governor-General and the Colonial Secretary, who shall decide without further recourse.

(Article 61 of the Law.)

ART. 113. If evident advantages appear in one of the projects over the rest, this one shall be preferred for the granting of the concession, which shall be made by the Municipal Council in accordance with the provisions of Article 109.

If it appears that none of the projects presented offers advantages over another, the Governor shall thus declare; and if the Municipal Council does not appeal from this ruling, he shall decide that a public bidding be held, on the basis of the project which has the priority.

Before announcing the bidding, the said project shall be appraised by an expert named by the Municipal Council and another by the petitioner, who, in their turn and before the appraisal, shall name a third by agreement, to act in case of disagreement. If there should not be an agreement between said two experts on the appointment of a third, he shall be named by the proper judicial authority.

The appraisal shall be made in a manner similar to that designated by Article 35, and the Municipal Council shall give its approval thereto, after the report of the expert in charge.

(Articles 61 and 62 of the Law.)

ART. 114. The bidding shall take place with the Alcalde presiding, assisted by the Technical Director, the Treasurer of the Municipal Council and the Secretary of the same, and in accordance with the provisions of Articles 36 and 37.

The concession shall be granted by the Municipal Council to the person who shall be declared the best bidder at the public sale, reserving to the author of the project which has served as its basis, the rights of preference on equal terms and of payment of the appraised value of the project, according to the rules established in Articles 38 and 39.

(Articles 62 and 72 of the Law.)

ART. 115. When, for the execution of a municipal work a subsidized concession is requested, to be paid from the funds of the Municipal Council, so far as presentation, proceedings and approval of the project and investigation concerning rates are concerned, the same method shall be followed as is provided by Articles 105 to 107 of this chapter referring to works without subsidy.

When the project is approved, its appraisal shall be made in the manner prescribed by Article 113.

(Article 75 and 76 of the Law.)

ART. 116. When the project is approved and the basis of the concession agreed upon between the Municipal Council and the petitioner with the approval of the Governor, the public bidding shall be had, at which the said project shall serve as the basis in a manner similar to that provided for works of the State, by Articles 43 and 44 of these Regulations.

The author of the project always has a right of preference on equal terms and to the payment of the appraisal in accordance with the provisions of Article 45.

(Article 78 and 79 of the Law.)

ART. 117. The guaranty which, in case of subsidy, shall be 5 per cent of the amount of the estimate, shall be deposited with the Treasurer of the Municipal Council.

Articles 47 to 50 of the present Regulations, with the corresponding modifications according to the provisions of Article 111, are applicable to this case.

(Article 80 of the Law.)

ART. 118. If there should be more than one project for the subsidized concession of a municipal work, the one offering the greatest advantages shall be selected, which shall serve as the basis for the bidding; and if it is believed that all the projects presented are equal, the one having priority shall serve for this object. When the project which shall serve as the basis for the bidding shall be determined, in one way or another, the appraisal shall be previously made; and for the rest there shall be applicable in this case, the same provisions which for similar cases are prescribed by the present Regulations in Article 112, and in those referring to works of the State and of the Province.

(Article 61 of the Law.)

ART. 119. When a work which shall be executed with municipal funds may be the subject of profitable operation, and the plan of rates for its use and profit shall have been approved in the manner prescribed by Article 98, such operation shall be carried out by contract, after public bidding, which shall take place according to provisions similar to those indicated by Article 36, for works of the State without subsidy.

The Municipal Council can not take charge of the operation of this class of work without previous authorization from the Government, and with formalities similar to those established by Article 87 for provincial works.

(Article 46 of the Law.)

ART. 120. When works, the concession of which is requested, affect the territory of two or more Municipal Councils of the same provinces, proceedings shall be had in each one of them independently, as to the examination of the projects and the investigations referred to in this chapter, sending the proceedings to the Governor through the respective Alcaldes.

The Governor shall decide concerning the approval of the projects as provided for by this chapter.

After the granting of concessions, declaration of forfeiture, and other resolutions which may be made by Municipal Councils, they shall come to some agreement; and if they should not be able to do so, the Governor shall decide, with a right of appeal to the Governor-General and the Colonial Secretary, and a further appeal by means of administrative litigation.

When the Municipal Councils interested belong to different provinces, the rights which according to this chapter belong to the Governors and the Municipalities, shall be exercised by the Governor-General and the Colonial Secretary, whenever the said authorities or Corporations do not agree.

(Articles 8 and 16 of the Law, and Chapters 6 and 7 of the same.)

ART. 121. The provisions of Chapters 2 and 3, of which no special mention has been made here, are applicable to concessions of municipal works with the modifications which the various cases require, the doubts and questions which may arise being decided according to the spirit of these provisions.

TITLE FOURTH.

CONCESSIONS OF WORKS NOT INCLUDED IN PLANS OF THE STATE, OF THE PROVINCE, AND OF MUNICIPAL COUNCILS.

CHAPTER VIII.

CONCESSIONS OF THE PUBLIC DOMAIN.

ART. 122. When individuals or Companies ask for the execution of public works which are not included in the plans formed by the State, the Province, and the Municipalities prior to the granting of the concession, there shall be the grant of the public domain which may be affected by the work, and the declaration of the public utility thereof.

The concession of the public domain in every case must be given by the Colonial Department or its Delegates.

If the work, the concession of which is requested, should alter in any manner the plans referred to by the preceding paragraph, the provisions of the second paragraph of Article 53 of the general Law of Public Works shall also be observed.

(Article 93 of the Law.)

ART. 123. In the concession of works which affect the public domain, the following cases are distinguished:

First. That the work in question does not hinder or impede the enjoyment or general use of the part of the public domain which it affects.

Second. That it hinders or impedes the said general use.

Third. That it permanently occupies a part of the public domain in which there is no use or general benefit.

Fourth. That it temporarily occupies a part of the public domain devoted to general use.

Fifth. That it alters established servitudes on private property for the benefit of the public domain.

(Article 94 of the Law.)

ART. 124. The person requesting the concession of a work affecting the public domain, in the manner designated in the first number of the preceding article, shall present his petition to the Colonial Secretary or to the Governor-General of the Island, accompanied with a project based on the following documents:

First. An explanatory memorial, in which a clear idea is given of the work, the execution of which is requested, and in which it is shown that neither by it nor by its operation the general use of the part of the public domain, which may be affected by said work, shall be impaired.

Second. Plans which show the situation, principal dimensions, and the other details of the work.

Third. An approximate estimate, in which, besides the calculation of the cost of the same, shall appear the value of the part of the public domain affected.

And fourth. The rates which it is proposed to establish for the use and profit of the work.

The petitioner shall accompany with the project a document showing that he has deposited in the Government Treasury an amount equal to one-half of one per cent of the estimate of the works which shall be built on lands of the public domain.

(Article 94 of the Law.)

ART. 125. The Colonial Secretary shall examine into the investigations to clear up the rights established on the public domain which it is proposed to occupy, the advantages or disadvantages which might result to the public interests from the work, and the other circumstances which it may be advisable to take into account before the granting of the concession.

These investigations shall be proceeded with in accordance with the provisions prescribed by the Regulations for the execution of the special laws of Public Works, the opinion of the Deputation being in all cases indispensable, as also that of the Chief Engineer and of the Governor of the province interested in the construction of the work, of the Inspection-General of Public Works, of the Governor-General of the Island, besides that of the Consulting Board of Roads, Canals, and Ports.

(Article 94 of the Law.)

ART. 126. The concession, if it shall be proper, shall be made by Royal Decree, except in the case that the work shall alter some of the plans of the State, according to the provisions of the second paragraph of Article 122 of these Regulations. In the concession there shall be stipulated the clauses and conditions which are set forth in Article 95 of the general Law of Public Works, and besides, the times and terms

in which the State shall be paid the price at which the part of the public domain it is to cede shall be valued.

The guaranty which it is necessary for the concessionaire to give shall be 3 per cent of the estimate of the works which shall occupy the public domain, and shall be returned when he has proved that he has completed the works, as provided for by Article 103 of the general Law of Public Works.

The conditions of forfeiture in these cases shall be the same as those for concessions without subsidy established by chapter 2 of these Regulations.

(Article 95 of the Law.)

ART. 127. In the case in which, according to the provisions of Article 96 of the general Law of Public Works, more than one petition for the same work is presented, the investigations referred to in Article 125 shall cover, moreover, the question of the advantages or disadvantages which might result by a comparison between the competing projects; and the one shall be preferred which offers the greatest advantages, or, in case of equality, the first one which shall have been presented.

Thirty days shall be declared to be the time within which propositions for the execution of the work may be presented counting from the publication of the first petition. After this period has elapsed no other new petition shall be admitted.

(Article 96 of the Law.)

ART. 128. The Colonial Secretary, nevertheless, in cases where there is not a marked preference between the proposals, or in any other case in which he may deem it convenient to the general interests, may order that the concession be made by means of public bids. In this bidding not only the proposers who have presented their projects may take part, but also any person who shall have made the deposit of one-half of 1 per cent provided by article 124.

(Article 96 of the Law.)

ART. 129. For the bidding, the project which shall first have been presented shall serve as the basis, provided that its author shall have accepted the modifications which the superior authorities may have deemed proper to introduce therein. In case of failure to accept these, the deposit and the project shall be returned, and the second project shall be taken up, proceeding with it in the same manner, and thus successively until the last, it being understood that no concession shall be granted if none of the petitioners accept the modifications introduced.

(Article 96 of the Law.)

ART. 130. The project which, according to the previous article, shall serve as the basis for the bidding, shall be appraised prior thereto in the manner provided by article 50 of these Regulations.

(Article 96 of the Law.)

ART. 131. The bidding shall be made, in the first place, upon the percentage of reduction in the rates approved for the use of the works;

and in case there are equal propositions, a new open bidding shall be held between the signers of the propositions, which shall be based on the raising of the price which has been assigned to the part of the public domain which should be necessary to grant.

If the bidders should make any proposition concerning this betterment, the one who shall have drawn the lowest number by lot before proceeding to the opening of the bids, shall be declared the best bidder.

(Article 96 of the Law.)

ART. 132. The petitioner to whom belongs the project which has served as the basis of the bidding, shall have the right of preference on equal terms if he so declares at the time of the public sale, which shall be extended for one-half hour for this purpose, so that he may make use of this right, which shall appear in the minutes. If he should not do so, the person who shall be declared the best bidder in the public sale shall be considered the concessionaire, by means of a declaration made by Royal Decree, issued by the Colonial Department after the deposit of a guaranty equivalent to 3 per cent of the amount of the estimate of the works affecting the public domain.

The one to whom the award is made shall, moreover, pay the petitioner whose project has served as the basis of the public sale the amount of said project, in accordance with the appraisal made, as provided by article 130.

(Article 96 of the Law.)

ART. 133. The concessionaire shall pay to the State the value at which the part of the public domain which has to be granted has been fixed. This payment shall be made at the times and in the manner determined by the provisions of the concession.

(Article 96 of the Law.)

ART. 134. When a work included in number 2 of article 123 of these Regulations is in question, the petitioner for the concession shall present the project referred to in article 124.

The memorial shall show the necessity for the occupation of the public domain, showing besides in what manner and to what extent the work will affect the general use established thereon.

In the proposal, besides the value of the part of the domain which is to be occupied, the damage to the general use caused by the execution of the work shall be stated, including both in a single amount.

With the project shall be accompanied the receipt for the deposit of an amount equivalent to 1 per cent of the estimate of the works which shall have to be established on lands of the public domain.

(Article 94 of the Law.)

ART. 135. After the project is presented, it shall be submitted to the investigations laid down by article 125, the Colonial Secretary having the right to approve it. If the work changes the plans of the State, there shall be presented to the Cortes the proper form of law, in the manner prescribed by article 53 of the general Law of Public Works.

In every case the concession for a work of this class can not be granted without public bidding, as determined by article 97 of the same law.

(Articles 94 and 97 of the Law.)

ART. 136. At the bidding the project approved shall serve as the basis, and the proposals shall be made in the first instance on reductions in the rates for the use of the work, and in case of equal propositions, on the raising of the value of the public domain which shall have to be granted, according to the figure which, for this purpose, shall have been fixed in the approved estimate, as provided in article 134.

(Article 97 of the Law.)

ART. 137. The concessions shall be granted to the best bidder by means of a Royal Decree, in which shall be fixed the clauses and conditions indicated in Article 126, and the times and manner in which the concessionaire shall pay to the State the amount which shall have been fixed for the value of the part of the public domain occupied, and the damages for the loss of its general use.

The guaranty shall be 5 per cent of the estimate of the works which shall be executed on lands of public domain, and shall not be returned until the concessionaire shall have shown that he has completed the works of the concession, as provided by Article 103 of the general Law of Public Works.

The conditions of forfeiture shall be the same as those established by said Article 126 of these Regulations.

(Article 98 of the Law.)

ART. 138. Whenever for the same work two or more petitions for concessions are presented, the selection of the project which is to serve as the basis of the biddings shall be proceeded with in accordance with the provisions of Articles 127 and 129, as the case may be, observing for all other purposes the provisions of Articles 130, 131, and 132.

(Article 99 of the Law.)

ART. 139. The concessions referred to in the previous articles of this chapter are subject, as to their terms and their general provisions, the formalities of the grant, the right of alienation on the part of the concessionaire, the supervision of the works, and the cases of forfeiture, to the provisions established for each of these points in Articles 100 to 104, both inclusive, of the general Law of Public Works.

(Articles 100 and 104 of the Law.)

ART. 140. When the work, the concession of which is demanded, is included in case number 3 of Article 123, and in consequence part of the public domain which will be affected is not devoted to any use or benefit whatever, the petitioner shall present the project drawn according to the following conditions:

First. A memorial in which the object of the work is stated, and the part of the public domain which is to be occupied, and proof that said part is not devoted to any general use.

Second. Plans which give a clear idea of the dispositions of the works.

Third. Approximate estimate of the same.

There shall be accompanied, besides, the rates which shall be established for the use of the work and the bases for their application.

(Article 106 of the Law.)

ART. 141. The project shall thereafter be the subject of an investigation, at which all the officials or Corporations shall be heard that in each case may be designated by the special laws of Public Works and the Regulations for their execution; and among them there shall always be consulted the Chief Engineer of the province and the Governor, who shall be the one to direct the investigation and who shall send its result to the General Government, which will forward it to the Colonial Department.

The Secretary, by means of a Royal Order, shall decide as to the concession, after hearing the Consulting Board of Roads.

(Article 105 of the Law.)

ART. 142. In case more than one petition for the same work is presented, all shall be submitted to a competitive examination during the investigations referred to in the preceding article; and the one shall be selected from among them which offers the greatest advantages to the public interests; and in case of equality among them the one which has been first presented; and in neither of these cases shall the other petitioners have any right of indemnity whatsoever.

(Article 105 of the Law.)

ART. 143. The essential clauses of the concessions referred to by Article 140 and the following articles shall be:

First. The guaranty which the concessionaire shall give in security for the fulfillment of his obligations. This shall not exceed one per cent of the estimate of the works affecting the public domain, and shall be returned to the interested party when the works have been executed to the value of one-third part of said estimate.

Second. The dates on which the works are to begin and end.

Third. The term of the concession, which may be perpetual in cases in which the special laws of Public Works shall so provide.

(Article 105 of the Law.)

ART. 144. These concessions shall be forfeited when the stipulated conditions shall not be fulfilled, and then shall follow proceedings similar to those provided by chapter 2, title first, of these Regulations, concerning the concessions of works of the State without subsidy.

(Article 105 of the Law.)

ART. 145. When the work which is to be executed comes within the case of number 4 of article 123, the petitioner may state his desires in a petition directed to the Governor of the province, who, following the procedure determined by the Regulations of the Special Laws, and after hearing the Chief Engineer, shall decide concerning the authoriza-

tion requested, imposing the proper conditions for the enjoyment of the concession. From the decision of the Governor the interested party shall have the right of appeal to the Governor-General and to the Colonial Secretary, who shall decide finally.

By means of similar proceedings a request included in paragraph 5 of article 123 of the Regulations shall be decided, provided that the concession be temporary; but in case a perpetual concession be requested, the decision shall be made by the said Colonial Department.

(Articles 107 and 108 of the Law.)

ART. 146. Grants of the public domain may be made for works devoted to the carrying on of a private industry, in accordance with article 109 of the Law. The Special Law of Public Works and the Regulations for its execution show the proceedings which in each case shall be followed in order to obtain the concession which it is proper to grant, the clauses which it shall contain, and the intervention in this matter belonging to the administrative officials.

(Article 109 of the Law.)

ART. 147. If, in accordance with Article 110 of the General Law, it is requested that a company or an individual be given the concession of part of the domain of the State, for the construction of a work devoted to public or private use, the same proceedings shall be observed as are prescribed in the present chapter for the granting of the public domain; but, nevertheless, the following provisions shall be kept in mind:

First. In this case the concession shall always be made after public bidding, which shall be based on a price better than that approved in the estimate, as affects that part of the domain of the State which is to be granted.

Second. This public bidding shall take place in accordance with the proceedings and the requisites established by the laws and instructions in force for the alienation of public lands, and the amount of the public sale shall be paid in the manner provided in the same legislation.

Third. In order to take part in the bidding, a deposit of 1 per cent of the amount of the estimate of the works shall be made, and the guaranty shall be 5 per cent of the same estimate, which shall not be returned until the complete termination of the works; and

Fourth. In case of the forfeiture of the concession, the concessionaire shall lose the guaranty and the amounts which he may have paid for the value of the granted domain, the State taking charge thereof for the use which it may deem proper.

(Article 110 of the Law.)

ART. 148. If the work which is to be executed changes servitudes established for the benefit of the public domain of the State, the concession thereof shall be granted by the Colonial Department or the Governors, according to whether it is perpetual or temporary, and in accordance with the proceedings provided for by Article 145 of the present Regulations.

(Article 111 of the Law.)

CHAPTER IX.

DECLARATION OF PUBLIC UTILITY.

ART. 149. The declaration of public utility of the work petitioned for, shall precede the execution of all public works, the concession of which is requested by individuals or Companies, in the cases which are not excepted by Article 113 of the General Law of Public Works.

(Article 113 of the Law.)

ART. 150. In all petitions for the declaration of public utility two cases shall be distinguished; that is to say:

First. That there is not asked in any grant the benefit of neighborhood, referred to in the first paragraph of Article 114 of the General Law.

Second. That, in addition, condemnation of private property under the laws of eminent domain is requested for the benefit of the projected work.

(Article 114 of the Law.)

ART. 151. In the first case of the preceding article, the petitioner shall present a preliminary project, which shall serve as the basis for an investigation, in the manner prescribed by the following articles; this preliminary project shall contain an explanatory memorial, general plans of the works, and an idea of its cost.

(Article 116 of the Law.)

ART. 152. If the work should be of a municipal character and should be included within one single district, the preliminary plans shall be submitted to a public investigation for a period of fifteen days, the Municipal Council having the right to declare the utility, in view of the result of this investigation.

If the work, being of a municipal character, affects more than one town, the information shall be made in all those which may be interested; and thereafter each Municipal Council, by means of its respective Alcalde, shall send the proceedings to the Provincial Deputation, which, in this case, shall have the right to make the declaration of utility.

(Articles 115 and 116 of the Law.)

ART. 153. If the work should be of a provincial character and affect one province only, the preliminary project shall be submitted to an investigation of the interested Municipal Councils, and in view of these the Provincial Deputation shall decide concerning the declaration.

In the same case when the work is provincial and affects more than one province, there shall be made in each one the corresponding investigation, submitting the preliminary project to the examination of the Municipal Councils. The respective Alcaldes shall send the proceedings to the Governor, and the said Authority, after hearing the Deputation and with his own report, shall send the proceedings to the

Governor-General, who shall decide as to the declaration in view of the investigations made, when it shall be according to the Law.

(Articles 115 and 117 of the Law.)

ART. 154. In case the work should affect general interests and, as a consequence, the character of a State work, the investigation on the basis of the preliminary plan shall begin by hearing the interested Municipal Councils, thereafter the Provincial Deputation or Deputations which the work affects, and the respective Governor shall send to the Governor-General the proceedings, so that he, when the decision does not belong to him, according to Article 115 of the Law, shall send it with his report to the Colonial Secretary, who shall make the declaration by Royal Decree, according to the provisions of said article.

(Articles 115 and 117 of the Law.)

ART. 155. When the declaration of public utility shall come within the second case of Article 150, and it shall be desired to have a right of condemnation of private property under the laws of eminent domain, the petitioner shall draw the project in accordance with the provisions determined by Article 6 of these Regulations for works of the State, adding the amount of the tax and the calculation of the probable earnings of the Company.

The petitioner shall also present the documents which he may deem proper in order to prove the necessity of the declaration of utility, and shall add to the project a statement, according to the municipal districts, of all the proprietors whose estates shall have to be occupied by the execution of the work.

The project shall be delivered by the petitioner to the Governor of the province, who shall have charge of directing the investigation which is to precede the declaration.

(Articles 115 and 117 of the Law.)

ART. 156. If the work should be of a municipal character, the Governor-General shall announce in the Boletin Oficial the petition, together with the list of names of the parties interested in the condemnations, ordering at the same time that the petitioner proceed to a survey of the works on the ground, of which he shall notify the Alcalde of the district in which the work is to be executed, to the end that he give notice to the interested owners and inform them of the day or days the said survey is to take place.

The petitioner or his delegate shall then proceed, on the days fixed, to the said survey, hearing on the ground the owners of the estates which the works will have to occupy, and giving orally such explanations as they may desire.

Within twenty days following the termination of the survey the parties interested in the condemnation proceedings may make whatever claims they may deem pertinent as to their rights and shall direct the same to the Alcalde of the proper town.

The Municipal Council, after hearing the technical Director of the Municipal Works, shall deliberate concerning the claims presented,

and as to whether the utility should or should not be declared; and the Alcalde shall send to the Governor-General the proceedings, with the report which might have been agreed upon by the Municipal Council, or with his own report.

The Governor, after first hearing the petitioner and the report of the Chief Engineer and of the Provincial Deputation, shall make the declaration of public utility by a resolution, setting forth the reasons, which shall be inserted in the Boletin Oficial of the Province.

(Articles 115 and 117 of the Law.)

ART. 158. If the work should be of a provisional character, the Governor shall follow all the proceedings provided for by article 156, and shall decide on the declaration, after hearing the Provincial Deputation, the petitioner, and the Chief Engineer.

If the work should be of a provisional character, affecting the territories of two or more provinces, there shall be observed in all the provinces rules similar to the preceding ones; but the Governors, instead of deciding, shall confine themselves to sending, with their report to the Governor-General, the investigations made in their respective provinces. The Governor-General shall decree in this case as to the declaration of utility whenever it shall belong to him, according to the Law.

(Articles 115 and 117 of the Law.)

ART. 159. When works are in question which affect the general interests of the State, the declaration of public utility shall be made by the Colonial Department, or, when the power is given him by law, by the Governor-General, after following all the proceedings prescribed by the two preceding articles, and after report from the Consulting Board of Roads, Canals, and Ports concerning the proceedings sent by the Governors.

(Articles 115 and 117 of the Law.)

ART. 160. From the decisions which, in connection with public utility, the Administration may render, there shall be the right of appeal by administrative litigation, in order that, before the hierarchical superior, and after the latter has rendered a final decision, the administrative litigation shall be proceeded with, when, in the proceedings begun for this purpose, there was some error in the form of procedure infringing on the provisions which regulate the course which is to be observed.

(Article 118 of the Law.)

Approved by Royal Order of this date.

Madrid, April 26, 1883.

NUÑEZ DE ARCE.

ARTICLES OF GENERAL CONDITIONS

FOR THE

CONTRACTING FOR PUBLIC WORKS IN CUBA.

GENERAL GOVERNMENT OF THE ISLAND OF CUBA,
Office of the Secretary, Department of Public Works.

Under date of the 11th of last December the Colonial Department communicates to His Excellency, the Governor-General, the Royal Order, which says:

YOUR EXCELLENCY: Under this date His Majesty the King (whom God preserve) has seen fit to issue the following Royal Decree. Considering the reasons submitted to me by the Colonial Secretary, and in conformity with the Council of State, I decree the following:

ART. 1. The Governor-General of the Island of Cuba, as the Superior Authority representing the Government of the nation and as delegate of the Colonial Secretary, is the Chief of the service of public works of the Island.

ART. 2. The Consulting Board of Public Works is the Corporation charged with informing concerning all matters deemed convenient by the Governor-General in regard to its department and in accordance with its regulations.

ART. 3. The Inspector-General is the second Chief of the service of public works and of its personnel, and as such is charged with its immediate supervision, with sending the proper reports, with making the proposals directed to the Governor-General, and advising him on all matters on which he may be consulted. He shall take the steps and prepare the decision as to the various proceedings, in accordance with the existing laws and provisions, without prejudice to the reports which the said Superior Authority, for his better information, may in the last stage deem it convenient to demand.

ART. 4. The proceedings regarding concessions, projects, construction, and the service and preservation of public works, shall be commenced in the civil Governments of their Provinces, and must be followed in the first steps according to existing provisions, and must be continued in them, the Governor of the Province deciding, or proposing a decision, as the case may be. Only when it is a case referring to or in which two or more Provinces are concerned, or in those of general character, shall the proceedings be initiated in the General Government, which will send it to the proper authority, so that the Provincial authorities interested may be heard.

ART. 5. The Governor-General, in accord with the Consulting Board and with the Inspector-General, may decide, according to law, as to those works, the total and complete estimate of which shall not exceed 5,000 pesos, it being understood that they shall be isolated or independent works, or those relating to preservation, repairs, or additions, which will not change the form and condition of others therefore he shall not approve projects or estimates of work, of sections of high ways, roads, or buildings, the direction, project, or general disposition of which shall not have been previously approved by the Government, much less to commence work of these kinds, without express authority.

ART. 6. The Governor-General shall not give in advance any authorization, if i be not clearly within his rights or those expressly delegated to him by the Govern ment, unless it shall be clearly within the provisions of the fifth right of the secon article of the Royal Decree of June 9, 1880, concerning powers of the Governo General; and even in these cases, in accord with the Consulting Board, the Counc

of Administration, and the General Inspection of Public Works, reporting by telegraph, and sending the proceedings which justify the measure by the first mail.

ART. 7. The projects and the estimates for the preservation and repair of highways, the amounts of which are already provided for by the General Budget of the Island, may be directly approved by the Governor-General, in accord with the Consulting Board and the General Inspection of Public Works; but they must be made up annually, adjusting themselves strictly to the forms and provisions previously approved by the Government, and according to the prices fixed in them as the basis of the Budgets.

ART. 8. Any change which may be deemed convenient to be made in the prices and conditions of the forms approved for the drafting of the projects and Budgets for preservation or repair, and which will essentially concern them, shall be submitted to the Superior Authority and authorized by him.

ART. 9. The Inspector-General may authorize the Chief Engineers to introduce in approved projects changes in form and detail which will not alter the conditions of resistance of the works nor their object, such as changes of levels, modification, and substitution in the kind of building, variation of some detail of construction, change in some alignment, modification of the height of the fences, culverts, and pontoons; but always providing that these changes do not increase the total estimate of the works.

ART. 10. When the said changes or the cost of the works should increase the estimates already approved, they can not be authorized by the General Inspection, which in a proper case shall submit them to the decision of the Governor-General, after an opinion of the Consulting Board of Public Works of the Island. The Governor-General shall only once authorize the increase, when it refers to a work approved by a Royal Decision, and it does not exceed 4,000 pesos, or when it belongs to a work the project of which has been approved by his authority, and the approved estimate of which shall in no case exceed 2,000 pesos; always immediately informing the Government of the authorization, and submitting the increase to its examination and approval, whenever the amount shall exceed that sum.

ART. 11. The Governor-General shall not by himself authorize any concession whatever for the construction of roads, canals, ports, works on the beaches or on the seashore, if not expressly and clearly authorized by the laws and general provisions. Such concessions shall be submitted to the general procedure indicated by the laws, and shall be decided by the Central Government, unless he has been delegated with powers for that purpose.

ART. 12. The Governor-General, after hearing the proper authorities and Corporations, shall propose whatever measures he may deem convenient for the greater activity and development of public works, as well as the modifications which he may deem necessary or advantageous, resulting from the study and application of the laws and provisions in force, for the best development of the interests of the Island.

All of which, by Royal Order, I transmit to Your Excellency for your information, inclosing a copy of the *Gaceta* in which the said Royal Decree is inserted.

And His Excellency having ordered its execution under date of the 7th instant, it is published by his order in the *Gaceta Oficial* for general information.

Habana, January 16, 1884.

The Secretary of the General Government,

M. DIAZ DE LA QUINTANA.

(*Gaceta*, January 4, 1884.)

Under date of the 7th of last January, the Colonial Secretary communicates to His Excellency the Governor-General the Royal Decree, which says:

YOUR EXCELLENCY: It being just and important that the promotions for service rendered in the Colonies shall always be granted with exactness, and on the dates on which the time is fixed therefor under existing provisions, and that therefore the petition and proceedings shall be commenced and proceeded with *before* the expiration of said time, demanding that the petitions of the Engineers and Assistants of Public Works shall be made at least three or four months in advance, according to whether they serve in the Islands of Cuba and Puerto Rico or in the Philippines; dating back the promotion to the corresponding date of the termination of the period fixed, whenever the proceedings shall not have been concluded; His Majesty the King (whom God preserve) has ordered, as an explanation of the provisions of the Royal Order of September 14th, 1879, that when the regulation time shall approach for the promotion of Engineers and the Assistants of Public Works serving in the Colonies, and who desire to continue their services there, they shall send their petitions at least three months in advance, when they reside in the Islands of Cuba and Puerto Rico, and four months if in the Philippines, so that they may decide concerning them at the proper time. By Royal Order, I communicate it to you for your information and consequent action.

And His Excellency having ordered its execution on the 8th instant, it is published by his order in the *Gaceta* for general information.

Habana, February 15, 1884.

The Secretary of the General Government,

MARIANO ARREDONDO.

(*Gaceta*, February 23, 1884.)

Under date of the 18th of last October, and under number 1545, the Colonial Secretary communicates to His Excellency the Governor-General the Royal Order, which says:

YOUR EXCELLENCY: Considering the communications of Your Excellency, numbered 1454 and 1474 of the 3d and the 5th of last July, respectively, in which Your Excellency informs me of the provisions adopted for the proceedings in matters of Public Works in that Island, and of the personnel of the same—Whereas, when the Royal Decree of May 29th of this year was promulgated, suppressing the post of Inspector of Public Works for reasons of economy, it was not the intention of His Majesty's Government to alter the existing organization in the service of Public Works of that Island, as can be proved by no resolution having been taken in the matter, and the Royal Order of the 11th of the following June, in which it was commanded that the Chief of the Province of Habana should take charge of the matters entrusted to the Inspection—Whereas, the Chief of the service to whom shall be entrusted the dispatch of the matters of the Inspection shall exercise *de facto* the duties which the Royal Decree of the 11th of last December and the other provisions in force in this connection assign to the Inspector-General of Public Works; duties which, according to the Regulations, belong to the Senior Engineer of the Corps of Roads of the Island, who is at present the Chief Engineer of the Department of Public Works of the Office of the Secretary of the General Government. Whereas, this last position is of an inferior class to that which he now occupies, and besides is incompatible with the duties pertaining to the one in charge

of the Inspection of Public Works; His Majesty, the King (whom God preserve), has seen fit to decree:

First. That the organization of the service of public works of that Island, as prescribed by the Royal Decree of the 11th of last December, and the other existing provisions concerning the matter, be declared in force, leaving without effect those issued by that General Government, and of which Your Excellency informs me in his communication of the 5th of last July.

Second. That the Chief Engineer of the first class of Roads, Canals, and Ports, José Paz Peraza, be appointed Inspector of the Railways of the West, giving him charge at the same time of the dispatch of matters of the General Inspection of Public Works of the Island.

Third. That the Chief Engineer of the second class of Roads, Canals, and Ports, José Pujols y Rusell, be appointed Chief of the Department of Public Works of the office of the Secretary of that General Government. I communicate it to Your Excellency by Royal Order, for your information and consequent action.

And His Excellency having ordered its execution on the 8th of this month, I publish it by his order in this way for general information, letting it be known at the same time that, as a result of the Sovereign decision, the Chiefs of this branch in the provinces of the Island shall cease to directly communicate to the Civil Governors of the same, but shall in the future do so in the same form as heretofore, to the General Inspection of Public Works, which is reestablished by the foregoing Royal Order.

Habana, November 21, 1884.

The Secretary pro tempore of the General Government,

ANTONIO DE CASTILLO.

(*Gaceta*, November 25, 1885.)

Under date of the 12th of August last past and number 1140, the Colonial Department communicates to His Excellency the Governor-General the following Royal Order:

YOUR EXCELLENCY: On this date His Royal Majesty the King (whom God preserve) has seen fit to issue the following Royal Decree:

ART. 1. Public works and services connected therewith which are in charge of the General Inspections in Cuba and the Philippines, and of the office of the Chief of Public Works in Puerto Rico, shall be executed, in general, by contract awarded after public bidding in accordance with existing provisions.

ART. 2. In the cases excepted from the formalities of public bidding by Article 6 of the Royal Decree of the 27th of February, 1852, extended to the Colonies by Royal Order of September 29, 1856, and by the 3d of the Instructions of August 25, 1858, issued for the Philippines, public works and services included therein shall be contracted for by private contracts or by the agreements provided for by Article 4 of said Instructions.

ART. 3. Works, parts of works, and property which shall have to be constructed or acquired in the Peninsula or in foreign countries to be transported to our Colonies, shall be excepted from the award on public bidding and may be the subject of private contract. Works included in this class, the value of which does not exceed forty thousand pesos for the Philippines and Cuba, and twenty thousand for Puerto Rico, may be contracted for by the respective Governors-General, but they must necessarily be made by the Colonial Department whenever they exceed said sums.

ART. 4. There may be executed by the system of management:

First. Works and services the value of which does not exceed a thousand pesos, but it shall not be necessary to enter into the contract for the same by means of any public bidding nor by private contract.

Second. Those exceeding said sum and included in one of the excepted cases by Article 6 of the Royal Decree of the 27th of February, 1852, and the third of the Instructions of August 25, 1858, above cited; and if it shall not have been possible to enter into a private contract for them after attempting to do so, if, from the reports of the Consulting Boards of Public Works in the Philippines, Cuba, and Puerto Rico, it appears that it is more advantageous to execute them by management than by increasing the prices or changing the conditions in order to again expose them to public bidding. In the last case an attempt shall be made to again make a contract by public biddings, or in default thereof by private contract, before ordering the execution by management.

Third. Those which, whatever may be their value, may be declared of the utmost necessity and urgency, by the procedure provided for by existing legislation.

Fourth. Those which demand especial care from a technical point of view, provided that they are proposed by the respective Consulting Boards. In the cases mentioned, Governors-General shall have the right to order the execution by the management system of the works and services in question, when the estimates do not exceed forty thousand pesos in the Philippines and Cuba and twenty thousand in Puerto Rico. When the work or service has a cost greater than the sums expressed, or should not be included in the third case of this article, its execution by management shall be referred to the Colonial Department.

ART. 5. The materials or property which are used in the work, the execution of which is ordered by the management system, may also be acquired by management. When it is considered advisable to begin the contracting of any or some of said materials or property by public bids or by private contract, it shall be thus expressly determined when the execution of the works is authorized by the proper person.

ART. 6. For the purchase of materials or property necessary for the works which shall be made by management, and for the repairs of those already constructed, the Engineers in charge of the works may dispose of an amount not exceeding five hundred pesos; and with the authorization of the Inspector-General of Public Works in Cuba and the Philippines or of the Chief Engineer of the province of Puerto Rico, when the amount exceeds this sum up to one thousand pesos. When the amount of any material or property should enter into consideration in some work of a value greater than this, its purchase or construction or extraction by management shall be authorized, and the authorization of this greater sum shall be given by the Governors-General.

ART. 7. The provisions of this decree include public works and service related thereto, whatever may be the source of the funds with which they are paid.

ART. 8. Governors-General shall make a report to the Colonial Department of the contract, by public bids or by private agreement, of all works or services the cost of which exceeds a thousand pesos, and the authorizations for the execution by management or for the purchase of materials and property which exceed said sum.

ART. 9. All the previous provisions which are changed by this decree are hereby repealed. All of which by Royal Order I communicate to Your Excellency, for your information and consequent action.

And its execution having been ordered by His Excellency, under date of the 7th instant, by his order it is published in the Gaceta for general information.

Habana, September 9, 1885.

The Secretary of the General Government,

H. R. DE REGUENGA.

(*Gaceta*, September 15, 1885.)

Under date of August 12 last past and No. 1143, the Colonial Department communicates to His Excellency the Governor-General the following Royal Order:

YOUR EXCELLENCY: Under this date His Royal Majesty the King (whom God preserve) has deemed proper to issue the following decree:

ART. 1. The Governors-General of the Philippines, Cuba, and Puerto Rico may approve the projects of all kinds of services and public works, whether new, or of preservation, or of repair, the estimates of which do not exceed 40,000 pesos in the first-mentioned cases and 20,000 in the last, providing that their decisions are in accord with the reports of the General Inspections and of the office of the Chief of Public Works, respectively, or of the respective Consulting Boards, or with the Councils of Administration in the cases when it is proper to hear them.

ART. 2. Whenever the said resolution is not had, or when the estimates exceed said amounts, the proceedings shall be sent for the decision of the Government, sending duplicates of the documents which form the projects.

ART. 3. There shall also be sent, within thirty days, copies of the proceedings and projects which are approved in accordance with the provisions of Article 1.

ART. 4. The Governors-General of the said provinces may decide by themselves on the execution of the services and public works, the projects of which may have been approved, providing that their cost does not exceed the sums respectively established by Article 1, when there is a credit in the existing budgets for the payment of the work referred to, reporting to the Government all the decisions which shall be made, from the commencement to the termination of the work and the service, their acceptance, and the liquidations when once approved.

ART. 5. If there should be no credits sufficient in the budgets, or when the work or service should exceed the amounts referred to, the Government shall be consulted in regard to its execution, the system of management or that of contract by public bids being proposed, sending in the latter case the articles of economic conditions and the other necessary documents, and in due time report thereof shall be made, as also of the beginning and the termination of the work, sending the approval of the memoranda of acceptance and liquidation.

ART. 6. The Governors-General of the Philippines, Cuba, and Puerto Rico may advance the authorization for the approval of public works and for the construction of works destined for private service, the concession of which, according to the Law of Waters of the 3d of August, 1866, in force in the Colonies, pertains to the Government, whenever they may do so in accordance with the report of the General Inspection and of the Consulting Boards in the Philippines and Cuba, and of the office of the Chief of Public Works and the Consulting Board in Puerto Rico, and in accordance also with the reports of the respective Councils of Administration, when these should be heard, necessarily sending by the first mail the complete proceedings to the Government, which shall continue the proceedings, reserving the right to decide them finally and to grant the concession prayed for, when this shall be proper.

ART. 7. In no case may Governors-General advance the authorization referred to in the previous article, before the proceedings prescribed by the Law of Waters in force shall have been completely terminated in the respective General Government, ready to be sent by the first mail for superior decision.

ART. 8. When the resolution to which Article 5 refers is not adopted, Governors-General can not advance the authorization either to effect the use prayed for, or to undertake the projected works, being compelled to wait for the decision of the respective proceedings by the Government.

ART. 9. For the application of this decree, by public works shall be understood all those which in the Philippines and Cuba are in charge of the respective General Inspections, and of the office of the Chief of Public Works in Puerto Rico.

ART. 10. The provisions of this decree are understood without prejudice to the powers which existing legislation grants to superior Authorities of the Colonies in grave and urgent cases and in those of absolute necessity, demonstrated in the manner provided for. Their decisions in these matters shall be communicated to the Government as soon as possible for the final decision which may be proper.

ART. 11. The General Laws of Public Works of Cuba and Puerto Rico, the respective regulations for their application, that of May 21, 1868, reorganizing the service of public works in the Philippines, and the law of Waters of August 3, 1866, shall be understood to be changed in those parts which are in conflict with the provisions of this decree.

ART. 12. The Cortes shall be informed of this decree. All of which by Royal Order I communicate to Your Excellency for your information and consequent action.

And its execution having been ordered by His Excellency, under date of the 7th instant, by his order it is published for general information.

Habana, September 9, 1885.

The Secretary of the General Government,

H. R. DE REGUENGA.

(*Gaceta*, September 19, 1885.)

Under date of August 2 last past and number 873, the Colonial Department communicates to His Excellency the Governor-General the following Royal Order:

YOUR EXCELLENCY: The King (whom God preserve) and in his name the Queen Regent of the Realm, has seen fit to issue under this date the following Royal Decree: In view of the proceedings begun in the Island of Cuba, relating to the convenience referred to for the study and construction of the highroad of Victoria de las Tunas to Puerto Padre, at the first point of Manati which is shown in the second place in the plan of highroads of that Island, which was published in the Gaceta of Madrid November 23, 1883: In view of the proceedings established therein and the reports sent concerning the said highroad, as well in the Island of Cuba as by the Consulting Board of Roads, Canals, and Ports, keeping in mind the resolutions concerning said plan by the Colonial Department and by the Council of Ministers, from whose decision at appears that the highway of Victoria de las Tunas to Manatí was substituted by that of Victoria de las Tunas to Puerto Padre, and only by material error the first instead of the second was put in the second place on drafting the Royal Decree of November 23, 1883; and in view of the report which has recently been published by the Consulting Board of Roads, Canals, and Ports concerning the proceedings recently sent by the Governor-General of the Island of Cuba concerning this matter, and on the proposal of the Colonial Department; in the name of my August Son the King, Don Alfonso XIII, and as Queen Regent of the Realm, I hereby decree as follows:

ART. 1. The general plan of highroads which shall be followed in the Island of Cuba, for the purposes of Article 4 of the law ordered to be enforced by Royal Decree of June 1, 1883, includes the following:

First, from Holguin to Gibara; second, from Victoria de las Tunas to Puerto Padre third, from Bayamo to Manzanillo; fourth, from Santa Catalina de Guaso to the port of Tánamo, through Sagua de Tánamo; fifth, from Victoria de las Tunas to Holguin; sixth, from Holguin to Jiguaní, through Cacocun; seventh, from Puerto Principe to Santa Cruz; eighth, from Santa Cruz to Sancti Spiritus, through Jíquimas Güinia de Santo Fernandez (railroad station of Trinidad), and Banao; ninth, from De la de Guanay to Mariel, to Cabanas; tenth, from Bahia Honda to the landing place of Sabanalamar, through San Cristóbal; eleventh, from Holguin to Sabanilla (railroad station of Cuba), through Tacamaro and Mayarí; twelfth, from

Pinar del Rio to the landing place of San Cayetano, through Rio Honda and Consolación del Norte; thirteenth, from Pinar del Rio to the landing place of Bailén, through San Juan and Galafre; fourteenth, from the landing place of Bailén to those of Arroyos, through Guane and Mantua; fifteenth, from Santa Catalina de Guaso to Baracoa; sixteenth, from Cabañas to Bahía Honda, through San Diego de Núñez; seventeenth, from Cienfuegos to Trinidad, through Arimao, Gavilan, and Cabaiguán.

Highroads which are of interest to the defense of the territory: First, from Santiago de Cuba to Vicana, through El Cobre, Guisa, and Zarzal; second, from Puerto Principe to La Guanaja; third, from San Gerónimo to Vertientes; fourth, from Bahía Honda to Mantua.

ART. 2. The highroads included in each one of the two groups should be studied and constructed in the order in which they are set forth in the order.

ART. 3. The study and construction of highroads shall be suspended, the line of which shall have to follow the direction of a railroad which is in course of construction. All of which by Royal Decree I communicate to Your Excellency as a decision of the proceedings which you were pleased to send to this office, number 613, of the 22d of March, relative to the advisability of giving preference for the study and construction to the highroad from Victoria de las Tunas to Puerto Padre, to that of the first Port to Manatí of this Island, which Royal Decree should be inserted in the official Gazette of the said Island.

And its execution having been ordered by His Excellency under date of August 25 last past, by Royal Decree it is published in the *Gaceta* for general information.

Habana, September 8, 1887.

JOSÉ PUJALS.

(*Gaceta*, September 17, 1887.)

His Excellency the Colonial Secretary, communicates to this General Government under date of the 27th ultimo the following order number 655:

YOUR EXCELLENCY: The application to the projects and construction of the works which may be therein executed of the new articles of general conditions for the contracting of the same, approved by Royal Decree of the Secretary of the Interior of June 11th, 1886, and of the formulæ for the drafting of projects of highroads, in the part applicable, approved by Royal Orders of June 26th and of August 24th of the same year, in force in the Peninsula, the application of which is proposed to public works of the Philippines by the Consulting Board of Roads, Canals, and Ports, being convenient and beneficial for the better service of public works in this Island; in conformity with said proposal, the King (whom God preserve) and in his name the Queen Regent of the Kingdom, has been pleased to order that the articles of general conditions for the contracting of said works and the formulæ for the drafting of projects of highroads, approved by the Royal Orders above cited, be extended to this Island and to public works of all kinds which may be projected or constructed in the future; for which purpose there are sent to Your Excellency the annexed eight copies of said documents, destined for the Offices of Public Works of these Provinces.

And its execution being resolved upon by His Excellency under date of the 26th of last month, by his order it is published in the Gaceta for general information.

Habana, June 4, 1888.

A. DE QUINTANA.

(*Gaceta*, June 9, 1888.)

ARTICLES OF GENERAL CONDITIONS FOR THE CONTRACTING OF PUBLIC WORKS.

[Approved by Royal Decree of June 11, 1886; extended to this Island by Royal Order of April 27, 1888.]

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE 1. Contractors of public works may be Spaniards or foreigners who are possessed of civil rights, in accordance with the laws of their respective nationality, and partnerships and companies legally constituted or recognized in Spain. There are excepted—

First. Those who have been criminally prosecuted, if any of them shall have been condemned to prison;

Second. Those who have failed in business, either by suspending payments or having their property attached; and

Third. Those who are shown to be debtors to the public funds in the capacity of taxpayers.

ART. 2. The person to whom the execution of a work or service for the same has been awarded, shall deposit, as a guaranty, the amount prescribed by the articles of particular conditions which may have served as the basis for the award. This deposit shall be made in the place and within the time designated by the said articles of condition

ART. 3. The time fixed in the previous article shall not exceed thirty days, and within it there shall be presented by the person to whom the contract is awarded, the receipt which shows that he has effected the guaranty referred to in the same article. In case of failure to do so there shall, without any further proceedings, be a declaration of the invalidity of the award, and the person to whom the award was made shall forfeit the provisional deposit which may have been made in order to take part in the public bids.

ART. 4. Every contract for the execution of public works shall be made by a public instrument, which shall contain the beginning and the ending and the forms prescribed by existing legislation.

The body of the said instrument shall consist of: So much of the memorandum of bidding as refers to the proposal at the public sale, or rather the one which is declared the most advantageous; the order of award; an exact copy of the receipt referred to in the preceding article and the addition of a clause or condition stating in absolute terms the

the contractor obligates himself for the exact fulfillment of the contract, in conformity with the provisions of these articles of general conditions, of the particular conditions, of the technical conditions of the project, and of the plans and estimate. Previously to the execution of the instrument, the contractor shall have signed, at the foot of said articles of particular and technical conditions and of the plans and of the estimate, his agreement thereto.

ART. 5. The contractor has the right to obtain copies, at his own cost, of the plans, estimate, and articles of conditions of the project. The engineers, if the contractor so requests, shall certify these copies after they have been compared.

ART. 6. Contractors are obligated to submit the decision of all questions arising with the Administration which might affect their contracts, to the Administrative Authorities and Tribunals in accordance with the Law of Public Works, renouncing the rights of common law, and to the privileges of domicile.

ART. 7. These articles of conditions shall control in all matters which are not modified by the particular conditions of each contract.

CHAPTER II.

EXECUTION OF THE WORK.

ART. 8. The Engineer or the person charged with the inspection and supervision of the works shall go over on the ground, in the presence of the contractor, the line and survey of the same made before the public bidding or award, drawing a duplicate memorandum, which shall be signed by the Engineer and the contractor, showing that the survey is made in accordance with the approved project. This shall be accompanied with the plans and longitudinal and transverse profiles which may be judged necessary, in accordance with the character and circumstances of the land and of the work, also signed by the Engineer and by the contractor. One of these copies of the memorandum shall be annexed to the contract records and the other shall be delivered to the contractor, sending a copy thereof to the General Direction.

In case differences arise between the project and the comparison with the survey, the memorandum shall set them forth, and they shall also be noted on the plans and the proper profiles; all proceedings being suspended until the decision by the superior Authority, to whose knowledge the matter shall immediately be brought.

The expenses of the comparison of the general survey, as well as the making of partial comparisons on the ground demanded in the course of the work, shall be at the expense of the contractor.

ART. 9. The acquisition of lands occupied by the work is at the expense of the State; but the contractor shall be obligated to pay its value, for which he shall be reimbursed by means of certificates issued by the Chief Engineer of the province, with a credit of 1 per cent by reason of the advance of the money.

ART. 10. The contractor shall begin the work within the time set forth in the particular conditions of the contract; he shall so carry them on, that within the various times set forth therein the corresponding part shall be executed, and shall finish them within the time fixed. In the execution, so far as the results of the plans and profiles of the project or of the survey which shall have been officially authorized are concerned, the provisions of the technical conditions and of the orders or instructions given by the Engineer, or by the subordinates directly charged with the inspection, shall be followed. The contractor may demand that these instructions or orders shall always be given, and this shall always be necessary when the technical conditions or the indications of the plans are attempted to be explained, interpreted, or modified. The contractor shall have, in all cases, a right to complain of the directions given by subordinates, to the Engineer, and of those given by the latter to the Engineer in Chief, who shall decide according to their judgment of what may be deemed just and proper.

ART. 11. If in any case whatsoever, independently of the will of the contractor, the latter can not commence the works within the time fixed, or shall have to suspend them, an extension shall be granted for a time sufficient for the fulfillment of the contract.

ART. 12. From the time the works are begun until their final acceptance, the contractor, or his duly authorized representative, shall reside at a place near the works, and he can not absent himself therefrom without notifying the Engineer and leaving a substitute to give orders, make payments, continue the works, and receive the orders which may be communicated to him. When this provision is violated, all the notices which are made in the office of the Alcalde of the town of his official residence, shall be considered valid.

ART. 13. The contractor, personally or by means of his agents, shal accompany the Engineers in the visits which the latter make to th works whenever they may so demand. He shall see to it, in the sam manner, that the proprietors or cultivators of the neighboring land do not infringe with their labors on the zone devoted to the executio of the works, and that they do not deposit therein material of an kind, immediately notifying the Engineer of any infraction of thes rules which may be observed.

ART. 14. The contractor can not refuse to admit the Engineer Assistants, or Overseers in charge of the inspection of the work, n demand that, on the part of the Administration, other experts b assigned for the inspection and measurements. If he believes himse to be prejudiced by the results of these inspections and measuremen he shall proceed as indicated in Article 10, giving the reasons of h complaint and the grounds therefor to the Chief Engineer, who sh either himself decide or report to the Government; but in neither ca shall the progress of the works be interrupted or disturbed for th reason.

ART. 15. The number of laborers for the auxiliary measures necessary for the execution of the works shall always be in proportion to the extent and nature of those which have to be executed; and in order that the Engineer may be sure of the fulfillment of this condition, the contractor shall always give an account thereof when it is demanded.

ART. 16. The contractor shall insure the lives of the laborers against all the accidents which may result from the work or be connected therewith. Those of the General Direction shall except those which may be declared to be imputable to the injured laborer by reason of his ignorance, negligence, or temerity.

The contractor shall make the insurance referred to in the preceding condition in the manner in which he may deem it convenient and under his responsibility, on the basis that, in case of the permanent injury of the laborer, or of his death, the latter or his family shall receive an amount equal to the pay for 500 working days; and in case of temporary injury the contractor shall pay him for the working days until eight days after his recovery, in case he does not again admit him to his employ, and only to the day of his recovery, if he returns to his employ.

The provisions of this condition govern in case that the laborer or his family renounces any other action for the payment of damages or injuries which they may have against the contractor.

ART. 17. For the lack of respect and obedience to the Engineers and subordinates in charge of the inspection of the works, or for conduct which compromises or disturbs the progress of the work, the contractor shall be obliged to dismiss his employees and laborers when the Engineer so demands, without prejudice to complaining to the Chief Engineer, in case no justifiable reason for the order is believed to exist.

ART. 18. The contractor shall be obliged to indemnify property owners for all damage which may be caused by the execution of the works, whether by the quarrying, by the removal of the ground for the building of embankments, or the occupation of the land for the formation of supports, and in order to accommodate shops and materials; by the working of roads for their transportation, and by the other operations which may be required in the course of the execution of the work.

The contractor shall fulfill the requisites prescribed by the provisions in force concerning this matter, unless an amicable arrangement is reached with the property owners concerning the appraisal and payment of the damages which may have been caused, in which case there shall be exhibited, whenever required, the agreement which may have been entered into between them.

ART. 19. The contractors may take and use the materials found in State lands or on the commons of the towns without paying indemnity of any kind, but subject to the police regulations which may be established for this purpose by those in charge of the administration and surveillance of said lands, who must be given previous notice, always respecting and replacing existing servitudes, as well as adopting the

proper measures in order not to disturb the free and safe use of said lands.

ART. 20. The contractor shall not under any pretext whatsoever construct any work other than in strict accordance with the project which may have served as the basis for the contract, otherwise he shall have no right to payment for the works executed in violation of this article, unless he proves, by presenting the written order of the Engineer, that the latter has allowed him to carry them out; in which case he shall be paid in accordance with the prices of the contract.

ART. 21. The contractor shall have permission to take material of all kinds from the places that he may deem convenient, always providing that they fulfill the conditions of the contract, are perfectly suitable for the object to which they are applied, and are employed in the works in conformity with the rules of construction.

ART. 22. Materials shall not be employed until they have been examined and accepted, in the manner and form prescribed by the Engineer.

ART. 23. When the excavations produce material which is not utilized by the contractor in the works of his contract and which can be utilized in any other work of the State, the contractor shall be obliged to pile them up at places near the place of extraction and in the manner prescribed by the Engineer, the expenses of the piling up being paid for.

ART. 24. When the materials are not of good quality, or are not well prepared, the Engineer shall order the contractor to replace them at his own cost with others conforming to the conditions. If he refuses to do so, the Engineer shall make a statement of the defects which they may have and shall send it to the contractor, who in his turn shall state the reasons existing for his refusal to agree with the orders of the Engineer, and the whole matter shall be brought to the attention of the immediate superior for the determination which may be deemed just.

If the circumstances or the condition of the work shall not permit awaiting this decision, the Engineer shall have the right to impose on the contractor the employment of the material which he shall deem best in order to avoid the damages which might result from the stoppage of the work, the contractor having the right to indemnity for the damages which may have been caused him in case the superior Authority shall not approve the decision made by the Engineer.

ART. 25. Until the final acceptance shall take place, the contractor is alone responsible for the execution of the works which may have been contracted for, and for the defects in the same which may be noted but he shall not be excused or have any right whatever from the fac that the Engineer or his subordinate shall have examined and gon over the work in the course of its construction. As a result, and whe the Engineers notice errors or defects in the constructions, whethe in the course of the execution or whether after their conclusion an

before their final acceptance, they may order that the defective parts be demolished and reconstructed by the contractor at his own cost. If the contractor should not deem this decision just, or should refuse to demolish and reconstruct as ordered, proceedings similar to those set forth in the preceding article shall be observed.

ART. 26. If the Engineer should find good reasons to believe the existence of hidden errors of construction in the executed works, he may order, at any time before the final acceptance, the demolition of such as may be necessary to ascertain those which are supposedly defective. The expenses of demolition and reconstruction which may be occasioned shall be paid by the contractor, provided that the errors really existed; otherwise they shall be paid by the Administration.

ART. 27. There shall be at the cost and risk of the contractor, the scaffolds, frames, apparatus and other auxiliary means of construction, observing, nevertheless, the precautions which the Engineer may deem convenient to establish for the greater safety of the laborers.

All the auxiliary means shall remain the property of the contractor on the conclusion of the works, providing the contrary is not agreed on in the particular conditions, no claim whatsoever being founded on the inefficiency of said means, or when they shall be specified in the estimate, or when they shall have been separately stated in the estimate or estimated all together.

ART. 28. No inscription whatever may be placed on the works without the authority of the Government.

ART. 29. The Government reserves the ownership of antiquities, objects of art, and mineral substances which may be utilized for public instruction which may be found in the excavations or demolitions. The contractor shall be obliged to employ, in order to extract them, all the precautions suggested to him by the Engineer, with the right, however, to indemnity for the expense which this work may occasion him.

If in the course of the construction of the work, or in consequence thereof, there should appear on the surface running water or currents of water, they shall also be the property of the Government; but the contractor may have the right to use them in the course of construction and for consumption by the laborers during the period of his contract.

CHAPTER III.

ECONOMIC CONDITIONS.

ART. 30. The contractor shall be paid for the work actually executed in accordance with the approved project or the modifications introduced therein, or the orders which may have been communicated to him in writing, providing that the technical conditions are always carried out, in accordance with which the measurement and valuation of the various units shall be made. Consequently the amount of each kind of work provided for in the estimate shall not serve as the basis for the establishment of any kind of claim, except as expressed in article 49.

ART. 31. When the contractor shall voluntarily employ, with the authorization of the Engineer, materials of greater dimensions than those set forth by the particular conditions, he shall only have a right to payment for the work which results from the cubic measurement made in accordance with the project, applying the prices of the contract. If the dimensions should be less, and nevertheless declared admissible, the payment shall be made according to the results of the cubic measurement.

The payment shall be made by reason of the augmentation of dimensions of materials whenever the Engineer may have in writing so ordered the contractor to use them.

ART. 32. The amounts calculated for accessory works, although appearing in a single amount in the general estimate, shall not be paid except at the prices and under the conditions of the contract, in accordance with the particular projects which may have been drawn therefor, or, in default of such, in accordance with the results of the final measurements.

In the same manner the extraction of rubbish and fragments which might result during the period of guaranty shall be paid for.

ART. 33. There shall be paid absolutely, but with the reduction made on the bidding, the determined amounts set forth in the estimate for auxiliary means of the execution and for the drainage, as well as for the indemnity for loss and damage occasioned by transit, use of provisional rates, alteration of drains, and similar works which do not form an integral part of the contract.

In the same way, the determined amounts for the preservation of the earthworks and constructions, and the work done by manual labor necessary for the preservation of the bed of the highroads, shall be paid for, whenever the time during which the preservation is charged to the contractor shall be fixed in the conditions. Whenever it is reduced, a proportionate deduction shall be made, and whenever it is augmented without fault of the contractor, there shall be paid, besides, a proportionate part for the excessive time.

In cases in which all or part of the preceding amounts do not appear in the estimate, it shall be understood that the expenses occasioned by those operations shall be included in the prices of the units of work provided by the estimate.

ART. 34. The payments shall be made at the times fixed by the particular conditions of the contract, by means of warrants issued by virtue of the certificates of work given by the Engineer. The warrants or their amounts, shall be necessarily delivered to the contractor in whose favor the award of the bid of the works has been made or to a person legally authorized by him, and never to any other person although warrants or letters requisitorial be issued by any Authority or Court for their retention, since public funds devoted to the payment of laborers or for their security are in question and not obligations of private interest to the contractor. Only the balance which may remain

after the final acceptance of the work in accordance with the conditions, and the guaranty, if it should not necessarily have to be retained for the fulfillment of the contract, shall be subject to the attachment decree by said Authorities or Courts.

ART. 35. Certificates of work shall be given at the times fixed in the articles of economic conditions of the contract, having the character of provisional documents of account, subject to the corrections and modifications which may result from the final liquidation.

In order to make these certificates the elemental process which have served as the basis of calculating the average price of each unit of work shall be applied, bearing in mind the reduction which may have been the result of the public bidding, the Engineer having the power on granting the certificates to deduct as much as 20 per cent of the amount of the valuation thus made, whenever special and justifiable circumstances which must be set forth, advise the making of this reduction.

ART. 36. The certificates shall include three-quarters of the value of the materials when they shall have been actually used in the work according to their valuation made by the Engineer, keeping in mind this payment in order to deduct it from the total amount of the works constructed with such materials.

ART. 37. Whenever drainage may be necessary which, because of the circumstances, is not at the expense of the contractor, the latter shall be obliged to pay the expenses of all kinds which may be occasioned, which shall be repaid to him by the Administration apart from the contract. For this purpose payment shall be made in the presence of a person designated by the Engineer, who shall draw the lists which, attached to the receipts, shall serve as documents proving the accounts, which shall be stamped with the approval of the Engineer.

Besides the monthly repayment of these expenses to the contractor, he shall be paid 1 per cent of their amount as interest on the money which he has advanced and remuneration for the work and labor which he may have had to perform.

ART. 38. If the Government should not make payment for the executed work within the two months following that in which the certificates were given by the Engineer, the contractor shall be paid, from the day on which said period of two months terminated, interest at the rate of 6 per cent annually on the amount of said certificates.

If two additional months have passed without the payment having been made, the contractor shall have a right to the rescission of the contract, the effects thereof being those stated in Article 54, and the corresponding limitation of the executed works and materials used shall follow. The petition for the rescission of the contract based on this delay in payments shall not be acted on unless the contractor proves that at the time of his statement he has invested in the works and in the materials furnished, the part of the estimate corresponding to the time of execution which may have been fixed by the contract, and shall

prove that at the proper time he has taken the necessary steps to collect the amount of the warrants issued in his favor without having succeeded in doing so.

ART. 39. In no case may the contractor alleging delay in payments suspend the works nor reduce them to a lower scale than that which proportionately is proper according to the time at which they are to be finished. When this happens, the Administration may carry out the provisions of Articles 55 and 56.

ART. 40. The contractor shall have no right to indemnity by reason of losses, damages, or injuries occasioned to the works, except in cases of force majeure. For the purposes of this article, the following only shall be considered as such:

First. Destruction by fire caused by electricity in the atmosphere.

Second. Damages produced by earthquakes.

Third. Those resulting from the movements of the land on which the works are constructed; and,

Fourth. Destruction occasioned by violence with armed hand in times of war, public sedition, or robbery by mobs.

In order to claim and obtain in a proper case the payment of the damages, the contractor shall follow the provisions of Articles 2, 3, 4, and 5 of the Regulations of June 17, 1868.

ART. 41. The contractor may not, under any pretext or error or omission, claim an increase in the prices fixed by the general terms accompanying the estimate.

Neither shall any claim whatsoever be admitted which is founded on statements made in the memorial concerning the works, their prices, and the other details of the project, alleging that such document is not the one which serves as the basis for the contract. The material errors which the estimate may contain, either by reason of variation in prices differing from those of the list or from error in the amounts of the work or its value, shall be corrected at any time they may be observed; but shall not be taken into account for the purposes indicated by article 49, except when a claim may have been established thereon within the period of four months, counting from the day of the award.

The material errors shall not change the proportional reduction made in the contract in connection with the amount which in the estimate has served as the basis for the same, but it shall always be fixed according to the relation between the amounts of said estimate (before the corrections) and the amount offered.

ART. 42. In no case may the contractor allege uses and customs of the country concerning the application of prices or measurement of the works when in conflict to the present articles of conditions or to the particular ones of the contract.

CHAPTER IV.

MODIFICATIONS OF THE PROJECT.

ART. 43. If, before the granting of the works or during their construction, the Administration should resolve to execute on its own account part of those included in the contract, or should decide to introduce into the project modifications which produce an increase or a reduction or even a suppression of amounts of work provided for in the estimate, or the substitution of one class of construction by another, provided always that they be of those included in the contract, these decisions shall be obligatory on the contractor, without the latter having any right, in case of suppression or reduction of the works, to claim any indemnity on account of the pretended benefits which he might have been able to obtain on the part of the works reduced or suppressed.

ART. 44. If, in order to carry out the modifications referred to in the preceding article, the Administration should deem it necessary to suspend the whole or a part of the works contracted for, the proper order in writing shall be sent to the contractor, and the measurement of the executed work shall be proceeded with in that part which is included in the suspension, a memorandum of the result being drawn.

ART. 45. Whenever, even when not stipulated in the particular conditions of the contract, it may be deemed convenient to employ material belonging to the State, the contractor shall only be paid the cost of the transportation and of the labor in accordance with the elemental prices; and if it should not be contained in this list, without any right to claim indemnity of any kind, unless there have already been furnished the materials contracted for. This alteration shall be considered a modification of the project for the purposes of article 49.

ART. 46. When it is deemed necessary to employ materials or to execute works which shall not appear in the estimate of the contract, their value shall be appraised at the prices assigned to other similar works or materials, if there should be any, and if not, shall be discussed by the Engineer and the contractor, and submitted to the superior Authority, if an agreement should be reached.

The new prices, agreed on in one way or another, shall be subject always to the corresponding reduction which may have been obtained on the public bidding.

When the employment of the materials or the execution of the works in question shall be proceeded with without previous approval of the superior of the prices which shall be applied to them, it shall be understood that the contractor renounces his rights and agrees with those fixed by the Administration.

When there shall be no agreement as to the fixing of these prices between the Administration and the contractor, the latter shall be

relieved from the construction of the part of the work in question without right to indemnity of any kind, being paid, nevertheless, for the materials which may have been used and which may have remained unemployed by reason of the change introduced.

ART. 47. When the contract includes some works which are of such nature that, calculating by a determined amount in the estimate, no definite project can be made by measurement because of the circumstances, there shall be applied to these works the provisions determined by articles 43 and 49 concerning modifications of projects.

CHAPTER V.

CASES OF RESCISSION.

ART. 48. In case of the death of the contractor, the contract shall be considered rescinded, unless the heirs offer to carry it out under the conditions stipulated in the same. The Government may accept or refuse the offer, without giving to them any right whatever to indemnification, although there shall be the right for the State to acquire, after an appraisement, the tools, utensils, and property used for the works which may be indispensable for their completion.

ART. 49. When the modifications which are mentioned in Articles 43 and 45 alter the estimate of the contract in such a manner that the total amount shows a difference of a fifth, more or less, the contractor shall have the right to rescission and to payment for the materials which he may have on hand and which remain unused, according to the prices of the special list. In order to fix this difference all the alterations introduced into the estimate shall be added, though some be for excess and others for deficit.

The contractor shall have the same right when alterations arise on account of error in the material referred to in Article 41, provided that a claim has been based thereon within the time specified by said article, or when the difference arises between the detailed estimate of the works referred to in Article 47 and the agreed amount stated in the general estimate of the works.

When two or more of the reasons stated in this article appear, their results may be accumulated in order to serve as a foundation for the right of rescission.

ART. 50. When the works can not be begun because of reasons independent of the will of the contractor, or when the Government decides that the works, after being commenced, shall cease or be indefinitely suspended, the contractor shall have the right of rescission; in the proper case there shall follow the provisional acceptance of the executed works, and the final acceptance when the term of the guarantee shall have expired.

ART. 51. If the time specified for the execution of the works shall have arrived without the suspension referred to in Article 44 having

been raised, the contractor shall have the right of rescission, and there shall immediately follow the provisional acceptance of the executed works, and the final acceptance, when the time of guaranty shall have expired. The same right is conceded when the suspension lasts more than one year, provided that the value of the work referred to shall be more than one-fourth of the total of the contract.

ART. 52. If during the execution of the works prices should rise very considerably, the contract may be rescinded on the petition of the contractor, provided that the proceedings instituted for this purpose shall prove: First, that the rise has taken place since the time when the public bids were had, not since the drafting of the project; second, that it is not owing to the execution of the works referred to in the contract, but to others which may have been subsequently undertaken, or to a general unforeseen cause; third, that it is not produced by circumstances of a temporary character, as agricultural or other similar works. A very considerable rise in prices is understood to be such as, applied to the execution of the works which remain to be executed, shall produce an amount greater than a quarter of the total amount of the contract.

ART. 53. In case that by reason of a rise in prices the contractor should claim rescission, the work shall not be suspended on that account.

After three months have elapsed and the Government shall not have decided concerning the claim, the contract shall be considered rescinded in fact, and there shall follow the liquidation of the works executed up to that time according to the prices of the same, without any increase or payment of any kind by way of indemnity for damages.

ART. 54. Whenever, for the reasons stated in Articles 38, 50, and 51, the contract is rescinded, the tools and utensils indispensable for the completion of the works, the employment of which shall have been previously authorized by the Engineer, and which the contractor does not care to retain, shall be taken by the Government after the price has been agreed upon, amicably or by experts, without increase of any kind under the pretext of benefits to be derived, or for any other reason whatsoever, it being understood that this payment shall only take place when the amount of the works completed up to the time of rescission does not reach two-thirds of the amount contracted for, when works of port or similar works are in question, or to four-fifths in case of highroads and works of similar character.

The materials collected and on the ground of the works, if they are actually received and are for application for the completion of the works, shall also be taken for account of the Administration at the prices fixed by the special list for this purpose; and if they should not be included in it, they shall be fixed after hearing both parties.

The materials which, collected under the same circumstances, shall be situated away from the works, shall also be taken from the contractor

provided that they be transported to the works within the period of one month, unless the Administration prefers to receive them at the place in which they happen to be.

The contractor shall also be given an indemnity, determined by the Government after hearing the Council of State, which shall never exceed 3 per cent of the value of the works which remain to be executed.

ART. 55. In the special technical conditions of each contract the development of the works shall be fixed, reasonable times being stated for the progress of the works during the course of the entire construction of the same.

These times shall be obligatory on the contractor, and if there should be reason for believing that within any one of them the corresponding development of the works can not take place, the expert Director shall give due notice in writing to the contractor, also making such rulings as shall be conducive to the punctual fulfillment of the contract.

If, in spite of this, the time fixed shall have elapsed, and the contractor shall not have constructed the corresponding work, the contract shall be rescinded.

ART. 56. In the case prescribed in the previous article, and when once the rescission of the contract has been decided on, it is understood that the guaranty is forfeited and that the contractor shall not have any claim whatsoever nor any other right than to the payment of the works constructed and accepted.

Only when the retardation of the works shall be shown to have been produced by unavoidable causes, and when the agreement is offered to be carried out on the extension of the time which may be designated may the Administration, if it deems it convenient, conceed such extension as may appear reasonable.

ART. 57. When the rescission of a contract takes place because of one of the reasons stated in Articles 49, 52, and 53, the contractor shall have no right to claim an indemnity of any kind nor to require the Administration to purchase the utensils and tools used for the works.

CHAPTER VI.

MEASUREMENT, ACCEPTANCE OF THE WORKS, AND FINAL LIQUIDATION.

ART. 58. The partial measurements shall be made at the times fixed in the articles of economic conditions of the contract, after citing the contractor, if the latter should desire to be present. As provisional documents they shall be subject to the corrections which may result from the final measurement, for which purpose approval or acceptance of the works referred shall not be presumed.

ART. 59. On the completion of the works their provisional acceptance by the Engineer, whom the General Direction may designate, shall immediately take place, and with the necessary presence of the con-

tractor or his duly authorized representative. If after being expressly required to appear, the contractor should not be present or should renounce this right in writing, agreeing beforehand with the result of the operation, the Chief Engineer of the province shall ask the Governor to make a new demand on the contractor, and if he should again be absent, said Authority shall appoint at the cost of the contractor an official representative.

The result of the acceptance shall be stated in the form of a memorandum, signed by all those present, and shall be sent to the General Direction.

If the works should be found to be in good state and in accordance with the conditions, they shall be provisionally accepted, and turned over to public use, the period of the guaranty beginning to run, as also that of the preservation fixed in the particular conditions at the cost of the contractor.

ART. 60. When the works have been provisionally accepted, there shall immediately follow the general and definite measurement, with the necessary presence of the contractor or his representative named by him or officially, as provided in the previous article.

The plans and profiles of the survey shall serve as the basis of the measurement of the plottings, which shall be drawn with the measurements taken from the work and also the form and disposition in which the superficial part of the ground shall remain, in order to deduct the number of cubic meters of cuts and embankments which the contractor has executed.

All works of construction shall be measured where they shall be visible, and in places where they are not visible the dimensions designated in the plans and profiles which shall necessarily have been made in the course of construction shall be adopted, and they shall be signed by the Engineer and by the contractor.

The volume of the foundation shall be determined by means of a shaft opened at the place designated by the Engineer.

Accessory works shall be measured in a manner similar to that employed in the measurement of the principal part of the works.

ART. 61. The valuation of the works executed by the contractor shall be made, applying to the result of the general measurement and of the cubic measurements the prices which for each unit of the work are provided for in the estimate, and further keeping in mind the provisions of Articles 30, 31, 32, and 33 of these conditions. The total amount shall be increased by such a per cent of the estimate of the contract and the reduction made on the bidding shall be applied proportionally from the result the amount paid on certificate shall be deducted.

The liquidation shall be drawn in accordance with the formulæ and instructions in force; and, with all the facts and copies of plans and profiles, shall be sent to the contractor with permission to retain the same for a period of thirty days, in order that he may examine them and return them with his agreement or his observations.

If because of the importance of the work, or because of the kind or number of the documents, the contractor should not deem that time sufficient for examination, he shall so state, suggesting the time that is necessary, and the Chief Engineer, if there should not be any inconvenience, shall decide whether the extension of time shall be granted or not, and also its duration.

When the time or the extension has expired and the contractor shall not have made his observations, it will be presumed that he agrees with the liquidation, which in such case, as also in the case where he replies, shall be sent, with the report of the Chief Engineer, to the General Direction for the decision which may be proper.

ART. 62. During the period of guaranty the contractor shall take care of the preservation and the policing of the works, employing in them the materials in accordance with the instructions given by the Engineer. If the preservation should be neglected, and if the order of the Engineer should be disobeyed, resulting in the imperilment of transit or public use of the work, the necessary works to avoid the damage shall be carried out by the Administration at the cost of the contractor.

ART. 63. When the period of guaranty has terminated, the final acceptance of the work shall follow, in accordance with the formalities specified in Article 59 for provisional acceptance, and if the works shall appear in a perfect state of preservation, receipts therefor shall be given and the contractor shall be relieved from all responsibility.

If the works should not be in good condition, this shall be made to appear in the memorandum; the Chief Engineer shall give the contractor precise and detailed instructions to remedy the defects which may have been observed, and shall fix the time within which to do so, making a new inspection of the works on the termination thereof and an acceptance of the works. If the contractor should not fulfill these orders, the contract shall be declared rescinded, with the forfeiture of the guaranty.

ART. 64. When the final acceptance has been made, the liquidation of the executed works and the labor performed during the time of the guaranty, shall be made, in accordance with the provisions of the estimate, of the particular conditions of the contract, and of the second paragraph of article 33 of the present conditions.

ART. 65. When the final liquidation has been approved, the guaranty shall be returned to the contractor, after he shall have shown by means of certificates of the Alcaldes of the municipal districts within which the works may have been executed, that there does not exist against him any claim whatever for loss or damages for which he may be responsible, or for debts to workmen, or for materials, and for the insurance of the laborers, and also show payment of the industrial tax corresponding to his contract.

ART. 66. If the Government shall believe it to be convenient to make partial acceptances, a contractor shall not for this reason have the right to ask that there be returned to him a proportional part of the guaranty, although he shall be free from all responsibility in connection with

the works accepted; but the guaranty shall remain intact until the completion of all the works, in order that it may be responsible for the fulfillment of the contract, as is provided for by the preceding article.

Madrid, June 11, 1886.

Approved by His Majesty.

EUGENIO MONTERO RIOS.

And by order of His Excellency, the Governor-General, it is published in the Gaceta for general information.

Habana, March 23, 1889.

PEDRO A. TORRES.

(Gaceta, 2d of April, 1889.)

Under date of the 30th of last April and number 534, the Colonial Secretary communicates to His Excellency the Governor-General the following Royal Order:

YOUR EXCELLENCY: It being convenient to regulate the proceedings commenced in the Island regarding works of ports and wharves and concessions of public works and to fix the basis to which this class of conditions must be adjusted, considering that the legislation in force in that Island as to that matter is the Law of Waters of the 3d of August, 1886, which is partly in conflict with the General Law of Public Works in force in the said Island, which law is with certain changes the one in force in the Island, and it being convenient not only to harmonize the first with the second, but also to make the legislation as to public works of that Antille as similar as possible to the legislation of the Peninsula, the King (whom God prepreserve), and in his name the Queen Regent of the Realm, has seen fit to decree that Your Excellency be advised to order the General Inspection of Public Works of that Island to study and propose in the shortest time possible, and within a period which must not exceed four months, the changes to be made in the laws as to Waters and Ports of the Peninsula of the 13th of June, 1879, and 7th of May, 1880, so that they may be applicable to the Island; and the instructions for the proceedings of concessions of Public Waters and concessions to individuals of works of Ports of the 14th of June, 1883, and 20th of August of the said year; trying to make said changes be the least possible in number, and justifying the reasons upon which the proposers based the reports which they submitted, the said propositions being made by the Council of Administration of that Island and the Consulting Board of Public Works, sending the complete proceedings in the shortest time possible to this Department, with the report and proposal of that General Government, an extract of which decision shall be published in the Gaceta of Madrid, and in full in the Gaceta of Habana.

By Royal Order I communicate it to Your Excellency for your information and consequent action.

And His Excellency having ordered its execution on the 25th of the present month, it is published by his order for general information.

Habana, May 31, 1889.

PEDRO A. TORRES.

(*Gaceta*, June 11, 1889.)

Under date of the 18th of last June and No. 730, the Colonial Department communicates to His Excellency the Governor-General the following Royal Order:

YOUR EXCELLENCY: In view of the proceedings which Your Excellency has sent me with your communication, No. 1076, of the 14th of last May, in regard to the

State taking possession of the highway from Habana to Güines and to Bejucal, to which the said proceedings referred, the taking possession of which Your Excellency has ordered temporarily in accord with the report of the Consulting Board and the General Inspection of Public Works of that Island. Considering that from the same proceedings and the circumstances of the case it results that the proposal of that General Government is convenient and justifiable, as well as the measure adopted by the said General Government, the King (whom God preserve), and in his name the Queen Regent of the Realm, has seen fit to order: That the taking possession by the State of the section of highway from Habana to Güines included between the corner at Toyo and Blanquizal, and the section from Havana to Bejucal included between the station of the City Railway and the outskirts of the ward of La Víbora, which sections of highways are to-day in charge of the Municipal Council of Habana, and that the resolution adopted by Your Excellency be approved, ordering therefore the taking possession of, publishing this resolution in extract in the Gaceta of Madrid and in full in that of Habana.

And its execution being ordered by His Excellency under date of the 5th instant, by his order it is published in the Gaceta for general information.

Habana, July 12, 1889.

PEDRO A. TORRES.

(*Gaceta*, July 23, 1889.)

Under date of the 12th of last month, and No. 483, the Colonial Department communicates to His Excellency the Governor-General the following Royal Order:

YOUR EXCELLENCY: In view of the communication of Your Excellency, No. 450, of the 7th of last March, and the proceedings which accompany it, relative to the request of the Municipal Council of Guanajay of this Island, which asks that the State take possession of the crossroads of the highroads from Habana to San Cristóbal and from Guanajay to Mariel, which run through several streets of said town; in view of the favorable reports rendered in connection therewith by the General Inspection and the Consulting Board of Public Works, and by the Council of Administration of this Island, keeping in mind the reasons given in support of said request, and that the granting of the same will result beneficially for the general interests of the country, the King (who God preserve) and in his name the Queen Regent of the Realm, has seen fit to order: That the request of Guanajay be granted, the State taking charge of the crossroads of the highroads from Habana to San Cristóbal and from Guanajay to Mariel, and keeping in its charge in the future the repairs and preservation of said crossings. All of which, by Royal Order, I communicate to Your Excellency for your information and consequent action; and an extract of this decision should be published in the Gaceta of Madrid and in full in that of Habana.

And its execution having been decreed by His Excellency on the 4th instant, by his order it is published in the Gaceta, for general information.

Habana, June 10, 1890.

RICARDO DE CUBELLS.

(*Gaceta*, June 14, 1890.)

TRANSLATION

OF

COLLECTION OF LAWS REFERRING TO PUBLIC WORKS IN PUERTO RICO.

(1896.)

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

GENERAL GOVERNMENT OF THE ISLAND OF PUERTO RICO,
OFFICE OF THE SECRETARY,
Bureau of Public Works, Civil Construction, Forests and Mines.

The following Royal Order, No. 233, dated May 21 last, is sent to this General Government by the Colonial Department:

YOUR EXCELLENCY: Under this date, His Majesty the King (whom God preserve), has been pleased to issue the following Royal Decree:

"ARTICLE 1. In Puerto Rico there shall govern a General Law of Public Works similar to that decreed for the Peninsula on the 13th of April, 1877.

"ARTICLE 2. The Colonial Secretary shall draft the regulations for the execution of this law and shall report this decree to the Cortes."

Which is sent to Your Excellency by Royal Order, accompanied by the law approved by said Royal Decree.

And in compliance with the superior order of Your Excellency, dated the 13th of the present month, it is published, together with said law, for general knowledge.

Puerto Rico, June 22, 1881.

FRANCISCO FONTANALS Y MARTINEZ,
Secretary of the General Government.

GENERAL LAW OF PUBLIC WORKS FOR THE ISLAND OF PUERTO RICO.

CHAPTER I.

CLASSIFICATION OF THE WORKS.

ARTICLE 1. Public works, for the purposes of this law, shall be understood to be those which are of general use or service, and such constructions as are devoted to the service and are in charge of the State, of the Provinces, and of the towns.

In the first group are included roads—ordinary as well as railroads—ports, light-houses, great irrigation canals, navigation canals, and the works necessary to the disposition, use, and police of waters, the retention of rivers within their beds, draining of lakes and marshes, and sanitation of lands. And the second group shall include public buildings devoted to service depending on the Colonial Department.

ART. 2. The examination and approval of the projects, supervision of the construction and preservation of the public works, their police and use, shall always be dependent on the Administration, in whichsoever of its central powers, and on the provincial and municipal Administrations.

ART. 3. Public works, both in relation to their plans and their construction, operation, and preservation, may be charged to the State, to the Province, to Municipalities, or to individuals or companies.

ART. 4. There are in charge of the State:

First. The highroads which are included in the general plan of those which have to be taken care of with general funds.

Second. The work of retaining within their beds and making navigable the principal rivers.

Third. Ports of commerce of general interest, as well as those of refuge, and military ports.

Fourth. Light-houses and buoys.

Fifth. The drainage of great marshes, lakes, and inlets belonging to the State.

Sixth. The construction, preservation, and operation of those railroads of great national interest which, because of high considerations of government, shall not be turned over to individuals or companies.

Seventh. All other railroads of general interest, in so far as concerns the concession, examination and approval of plans, and superintend-

ence, in order to see that they are constructed and operated in the safest and most proper manner.

Eighth. The construction and preservation of civil buildings necessary to the service of the Administration.

(Article 1 of the Regulations.)

ART. 5. There are in charge of the Province:

First. The roads included in the plan of those which have to be attended to with provincial funds.

Second. The ports within its territory, which, not being included in the third paragraph of Article 4, offer greater advantages than those of a given locality.

Third. The sanitation of lakes, marshes, and inundated lands in which the Province is interested, and which are not included in the fifth paragraph of said Article 4.

Fourth. The construction and preservation of the buildings necessary for the service of the Provincial Administration.

(Article 56 of the Regulations.)

ART. 6. There are in charge of the Municipalities:

First. The construction and preservation of local roads included in the plan of those which have to be taken care of with municipal funds.

Second. The works for supplying water to towns.

Third. The drainage of lakes and unhealthy lands which are not included in the fifth paragraph of Article 4, nor in the third paragraph of Article 5, and which affect one or more towns.

Fourth. Ports of merely local interest.

Fifth. The construction and preservation of the buildings necessary for the service of the municipal Administration.

The works necessary to make the streets, squares, and boulevards of the towns thoroughfares.

(Articles 90 and 91 of the Regulations.)

ART. 7. The following may be in charge of individuals or companies, in accordance with the general provisions of this law and the special provisions for each class of works:

First. Highroads and railroads in general.

Second. Ports.

Third. Irrigation and navigation canals.

Fourth. Drainage of lakes and marshes.

Fifth. Sanitation of unhealthy lands.

Sixth. Water supply of towns.

(Article 90 of the Regulations.)

CHAPTER II.

ADMINISTRATION AND ECONOMIC MANAGEMENT OF PUBLIC WORKS.

ART. 8. The following shall be in charge of the Colonial Secretary:

First. All that refers to the plans, construction, preservation, repair, and police of the highroads in charge of the State.

Second. All that concerns the method and form of the constitution of partnerships or companies which may demand concessions of railroads of general interest, the granting of these concessions and privileges corresponding thereto, the examination and approval of the plans, and the service for the inspection which the State shall exercise in the construction, preservation, operation, and police of said railroads.

Third. All that refers to the construction and operation of those railroads of great public interest which, according to paragraph 6 of Article 4, are declared by special laws to be in charge of the State.

Fourth. Irrigation and navigation canals which may also be in charge of the State, in whatever relates to the drafting of plans, to works of construction, preservation, and improvement, and, finally, to the technical part of the distribution of the water and the policing of the navigation.

Fifth. The management and police of public waters, of rivers, torrents, lakes, streams, canals of artificial currents; the works relative to navigation, river navigation, to the defenses of the border of the rivers and lowlands exposed to be swept away or inundated; the draining of public waters, sanitation of marshy lands, and, finally, the technical policing of inland navigation.

Sixth. The works of construction, preservation, and repair of the ports in charge of the State, and the technical policing of the same.

Seventh. The light-houses and all classes of maritime signals and buoys on the coast.

Eighth. Everything in connection with the construction, building of additions, improvement, and preservation of the civil buildings devoted to services dependent upon the Colonial Department, and with those constructions which have the character of artistic and historic monuments.

Ninth. The inspection of public works which are in charge of the Province or the Municipalities.

(Articles 78, 89, 101, and 120 of the Regulations.)

ART. 9. The Secretary of War shall have charge of everything in connection with the public buildings devoted to the service depending on said Department.

ART. 10. The Provincial Administration, according to the Organic Law, shall have charge of—

First. The highways which, according to this Law, are in charge of the Province, as well as those which have to be provided for wholly with provincial funds in matters relative to the studies, construction, preservation, repair, and policing of said highroads.

Second. Navigation and irrigation canals declared to be exclusively of provincial interest, the technical part of the distribution of the water and of the policing of the navigation.

Third. The sanitation of lakes and marshy lands declared of exclusive interest to the Province.

Fourth. The construction and improvement of the buildings having a provincial character devoted to public service, and the preservation of historic and artistic monuments.

(Article 56 of the Regulations.)

ART. 11. The Municipal Administration shall, in accordance with the Organic Laws, have charge of—

First. The construction, repair, and preservation of local roads paid for by Municipal Councils, or which should be in charge of them, according to the provisions of this Law.

Second. The water supply of towns, in so far as the construction of the works or the concession of the same to private enterprises is concerned.

Third. The drainage of lakes or unhealthy lands which are declared of purely local interest.

Fourth. The construction and preservation of ports of local interest.

Fifth. The construction and improvement of buildings devoted to the public service, and the preservation of historic and artistic monuments.

(Article 91 of the Regulations.)

ART. 12. The public works which have to be paid for with funds of the State shall be executed subject to the credits voted in the general budgets or in special laws.

ART. 13. In all the annual or general budgets of the State there must appear exactly the amounts necessary for the preservation of actually existing public works, which are in charge of the Colonial Department, as well as those which the economic resources will permit, for carrying on those already commenced and for undertaking other new ones.

ART. 14. No amount whatever can be expended in public works of the State in this Island, under the Colonial Department, except in accordance with a project duly approved, according to the provisions of the present law.

ART. 15. In the annual budgets of the Province there must be included exactly the amounts which may be necessary for the preservation of such actually existing works, as are in charge of the Province, as well as whatever the resources of the said Province may permit for the prosecution of those already begun, and for the undertaking of other new ones.

(Article 64 of the Regulations.)

ART. 16. No other provincial public work can be undertaken except in accordance with a project previously approved by the Deputation, after report of the Chief Engineer of the Province.

(Articles 58, 59, and 120 of the Regulations.)

ART. 17. In the municipal budgets there shall appear precisely the amounts necessary for the preservation of public works, which are in charge of Municipal Councils, as well as what the resources of the

Municipality may permit for the prosecution of those already commenced and for the undertaking of other new ones.

(Article 99 of the Regulations.)

ART. 18. No other municipal public work can be undertaken without a project previously approved by the Governor of the Province, after hearing the Chief Engineer of the same.

(Article 93 of the Regulations.)

ART. 19. In the execution of all public works there must be observed, in so far as the investment of general provincial or municipal funds is concerned, the rules established in the Law of Accounting and in the organic laws of the Deputation and the Municipal Councils of this Island, as well as in the provisions of the Royal Decree of the 27th of February, 1852, in force for contracting public works, when they are to be executed by contract.

CHAPTER III.

WORKS PAID FOR BY THE STATE.

ART. 20. The Colonial Department shall, at the proper time, formulate the general plan of public works which have to be paid for by the State, presenting the respective drafts of the law in which these are determined and classified, in their order of preference, to the Cortes.

(Article 2 of the Regulations.)

ART. 21. The Government can not undertake any public work for which there has not been provision made in the budgets, assigning the proper credit. In any other case, in order to undertake a work, it shall be necessary for the Government to be authorized to do so by a special law. From this requisite are excepted works of mere repair, as well as those of new construction which shall be declared of admitted urgency by the Colonial Department or its delegates, after report of the Consulting Board of Roads, Canals, and Ports, and of the full Council of State.

(Articles 9, 10, 11, and 12 of the Regulations.)

The Colonial Secretary shall himself make use of the privilege to declare a work of admitted urgency which this article confers on him, when its value exceeds two thousand pesos. If the amount should be less, the Governor-General may authorize its execution, after report of the Chief Engineer of the Province and of the Administrative Council which hears disputes, immediately reporting it to the Government.

ART. 22. No amounts whatsoever shall be included in the general budgets of the State for public works which are not included in the plans referred to in Article 20, unless the Government has been authorized to do so by a special law. In any case, in order to include the value of a work in the general budget, it shall be necessary that there be a previous study made and that the project receive the proper approval.

Concerning works of preservation and repair, it shall be sufficient that the general credit for this purpose be included in the budgets of the State existing at the time in which these works are to be executed.

(Article 13 of the Regulations.)

ART. 23. With the legislative credits, the Government may order the study of public works, the execution of which it deems convenient, in compliance with the provisions of the two preceding articles.

(Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Regulations.)

ART. 24. The Government may impose assessments and taxes for the use of works which are building with general funds, without prejudice to the rights which may have been acquired, and making report thereof to the Cortes.

ART. 25. The Government may construct the works in charge of the State by management or by contract. The first method shall be applied only to those works which can not be contracted for because of their special conditions, or because they can not be easily provided for in the budgets, on account of the predomination of the hazardous parts in them, or for any other reason.

(Article 14 of the Regulations.)

ART. 26. The Government may contract for public works of which it may be in charge:

First. By obligating itself to pay the value of the works, according as they are being constructed, at the times and in the manner which may be determined on in the special provisions of each contract, and in the general conditions which should be contained in all those referring to this service.

Second. By granting to contractors the right to dispose of, for a specified time, the proceeds of the assessments which may have been established for the use of the work, according to the provisions of Article 24 of the present law.

Third. By combining the two methods referred to.

(Article 17 of the Regulations.)

ART. 27. When the works which the State has constructed may be operated with profit, this shall be done by means of a contract awarded after public bidding, excepting in the cases in which, because of special circumstances, it is declared proper that the Government shall take charge thereof. This declaration shall be made by a decree issued by the Colonial Department, after hearing the Consulting Board of Roads, Canals, and Ports, and the Division of Public Works of the Council of State.

(Articles 6 and 54 of the Regulations.)

ART. 28. In the works which are executed at the expense of the State in the manner indicated in the second and third paragraphs of Article 26, the prices which are fixed for the use and operation of said works, shall not exceed the schedule of rates in accordance with which the award may have been made; but these rates may be reduced, if

the persons to whom the award has been made shall deem it convenient, subject to the conditions which are prescribed in the contract.

ART. 29. In the articles of conditions of each contract shall be included the gratuitous services which those to whom the contract has been awarded must render, and the special rates for different public services.

ART. 30. The study of the projects, the direction of the works which are executed by management, and the supervision of those which are constructed by contract shall, in all cases where the works are in charge of the State, be carried on by the Corps of Engineers of Roads, Canals, and Ports. The Government, through the same Engineers, shall carry on the inspection of provincial and municipal works which, according to the ninth paragraph of Article 8 of the present Law, is attributed to it.

For civil constructions, the Governor may appoint architects having professional degrees, who shall be at the orders of the Chief Engineer of the Province.

(Articles 15 and 18 of the Regulations.)

ART. 31. Contractors shall be at liberty to select such persons as they may deem proper for the direction of the works which they obligate themselves to construct, who shall in all cases exercise their duties under the surveillance and inspection of the Government agents, as provided for in the previous article.

ART. 32. Contractors of State works, their employees and laborers, shall have the local benefits of the use of firewood, pasturage, and other rights which the inhabitants of the town within the district in which said works are included may enjoy.

ART. 33. The works of preservation and repair which are necessary for works in charge of the State, shall be carried on by the Colonial Department, adjusting themselves to the credits which shall have been assigned for that purpose in the general budgets, in accordance with the provisions of Article 13 and of paragraph 2 of Article 22 of this Law.

(Article 8 of the Regulations.)

CHAPTER IV.

PROVINCIAL WORKS.

ART. 34. There shall be established in this Island, after the proceedings which the Regulations may provide, the plans of public works which, in accordance with Article 5 of this Law, shall be in charge of the Provincial Deputation.

These plans, in which the works shall be classified, showing the order of preference in which they should be constructed, shall be submitted for the approval of the Colonial Secretary.

(Articles 56, 57, and 58 of the Regulations.)

ART. 35. No works shall be undertaken at the expense of provincial funds, unless there be included the proper credit for this purpose in the budget of expenses of the Province.

ART. 36. In order that the appropriation for a public provincial work be included in the general expenses of the Province, it shall be necessary that said work be included in one of the plans referred to in Article 34, and that its project be previously and duly approved in the manner prescribed by Article 16 of the present Law.

Exception is made, however, of cases of admitted urgency, in which, after declaration of the Colonial Secretary, and after the proceedings provided for by the Regulations have taken place, the necessary credit for the execution of the work in question may be included in the budget of the expenses of the Province. But even in these special cases the proceedings of the study of the project and its approval must always have been first had, in accordance with the provisions of said Article 16, and also the declaration of public utility which should be made in accordance with the provisions of the present law.

(Articles 60, 62, and 63 of the Regulations.)

ART. 37. With the credits which shall be included in the provincial budget the Deputation may decide that the study of such public works in their charge as they may deem proper, shall be made in accordance with the provisions of the two preceding articles.

ART. 38. The Provincial Deputation may impose taxes for the use of the work in its charge in order to reimburse itself for the amount which it may have devoted to that purpose. The imposition of these taxes shall, in all cases, be submitted for the approval of the Government.

(Articles 65 and 87 of the Regulations.)

ART. 39. The Deputation may execute its works by management or by contract, proceeding in each case as provided by Articles 25 to 29, both inclusive, of the present Law, in the manner prescribed therein concerning the works in charge of the State.

(Articles 60 and 61 of the Regulations.)

ART. 40. The projects, direction, and supervision of the works which are executed with provincial funds shall be carried on by Engineers of Roads, or by Assistants of Public Works. Civil constructions may be in charge of architects who have their professional degree.

Among the conditions established in each case shall be the naming of these technical agents by the Provincial Deputation.

(Articles 61, 66, 67, 68, and 71 of the Regulations.)

ART. 41. Contractors of provincial works may entrust the direction of the same to such persons as they may deem proper, keeping in mind the provisions of Article 31 concerning the works of the State; and these persons shall have the benefits allowed by Article 32 to those who contract for works which shall be executed with general funds.

ART. 42. The works of preservation and repair which may be necessary for the works which are in charge of the Province, shall be carried

on with reference to the credits which, as provided in Article 15 of the present Law, shall appear in the provincial budgets.

(Article 64 of the Regulations.)

ART. 43. Provincial public works shall be inspected by the Government, in accordance with the provisions of this Law, whenever the Colonial Secretary or the Governor-General thus orders, which shall at least be when they are finished and before they are turned over to public use.

(Articles 69 and 70 of the Regulations.)

CHAPTER V

MUNICIPAL WORKS.

ART. 44. Municipal Councils shall, by the proceedings prescribed by the Regulations, formulate the plans of public works which may be in their charge, which shall be submitted for the approval of the Governor of the Island. If from the decision of said authority approving or disapproving these plans there should be any appeal, the entire proceedings shall be sent to the Colonial Secretary, who shall definitely decide.

(Articles 91, 92, and 93 of the Regulations.)

ART. 45. No municipal work can be carried out if in the budget of the respective Municipal Council there shall not be a credit assigned for this purpose, in the manner prescribed by the Laws and Regulations.

(Article 93 of the Regulations.)

ART. 46. In order that the appropriation for a municipal work may appear in the budget of the proper Municipal Council, it is necessary that said work be included in one of the plans referred to in Article 44, and that its project shall have been duly approved in the manner prescribed by Article 18 of the present Law. Exception is made in cases of admitted urgency, when, after the Governor has declared it, and after the Provincial Deputation has been heard, and with the right of appeal to the Governor on the part of the Municipal Council interested, there may be included in the Municipal budget the credit necessary for the execution of the work. Even in such cases a plan must have previously been drawn and the project approved, and the declaration of public utility of the works made, in conformity with the provisions of the present Law.

(Articles 95 and 96 of the Regulations.)

ART. 47. Municipal Councils may impose assessments and taxes on the works which are executed at their cost, in order to reimburse themselves for the amount which they may have expended. For the imposition of these taxes the authorization of the Government shall be necessary, which, in order to grant it, shall first hear the report of the Governor of the Island.

(Articles 98 and 119 of the Regulations.)

ART. 48. Municipal Councils may construct their works by management or by contract, subject to the provisions of the present Law concerning this matter, in connection with the works in charge of the State and of the Province.

(Article 94 of the Regulations.)

ART. 49. For the drafting of projects, direction and supervision of the works which have to be constructed with municipal funds, Municipal Councils may name the person whom they believe best fitted therefor, provided he has the necessary professional degree to accredit his ability.

(Articles 100 and 102 of the Regulations.)

ART. 50. The works of preservation and repair, which are necessary for works in charge of Municipal Councils, shall be carried out without any other limitation than that they must come within the credits, which, in accordance with Article 17, shall be contained in the municipal budgets for that purpose.

(Article 99 of the Regulations.)

ART. 51. Roads of communication and other public works, which are constructed at the expense of Municipal Councils, shall be inspected by the technical agents of the Government whenever the Governor may deem this proper, and in all cases shall be submitted to the inspection of these agents, before being turned over to public use.

From this provision are excepted the ordinary building of paths and local roads.

(Articles 101 and 110 of the Regulations.)

CHAPTER VI.

WORKS EXECUTED BY INDIVIDUALS FOR WHICH NO SUBSIDY OR OCCUPATION OF THE PUBLIC DOMAIN IS ASKED.

(Articles 89, 90, and 120 of the Regulations.)

ART. 52. Individuals and companies may construct, without further restrictions than those imposed by the Police, Safety, and Public Health Regulations, any work whatsoever of private interest which does not occupy or affect the public domain or that of the State, or which does not demand the exercise of the right of eminent domain over private property.

ART. 53. Individuals and companies may also build and operate public works devoted to general use, and the others which are enumerated in Article 7 of this Law, when given the right to do so by concession.

ART. 54. Said concessions, providing that no subsidy or constant occupation of the public domain is requested, or that they do not destroy the plans which are referred to in Articles 20, 34, and 44, shall be granted by the Colonial Department, by the Provincial Deputation, or by the Municipal Council, respectively, in whose charge the works

may be. The concessions of works for which no subsidy is requested, but which destroy the plans of the works in charge of the State, referred to in Article 20, can not be granted except by means of a law. In the same case those which destroy the plans of municipal or provincial works, referred to in Articles 20 and 44, can not be granted except by means of Royal Decrees issued by the Colonial Department.

(Articles 19, 72, 73, 103, and 104 of the Regulations.)

ART. 55. In all cases the concessions referred to in the preceding article shall not be granted for more than ninety-nine years, unless the very character of the work should demand a longer period, which shall always be granted by a law. When the time of the concession has run, the work shall become the property of the State, of the Province, or of the Municipality in whose charge it might be. Every concession shall be granted without prejudice to third parties, and protecting the interests of private persons.

ART. 56. In order that a concession to an individual or company of a work in the cases referred to in Article 54 may be granted, there shall be necessary a project with all the facts which, according to the provisions of the Regulations, may be necessary to form a judgment of the work, of its objects, and of the advantages which will inure to the general interests from its construction.

(Articles 20, 21, 22, 74, and 105 of the Regulations.)

ART. 57. In order to form the project referred to in the preceding article, the petitioner may request of the Colonial Department, of the Governor-General, or of the proper corporations the necessary authorization.

This authorization shall carry with it:

First. The power to ask for the protection and aid of the authorities.

Second. The power to enter the private property of another in order to make the studies, after having received the permission of the owner, manager, or attendant who may reside on the property or near it, and otherwise, or when this is not granted, on the permission of the Alcalde, who shall always grant it when there is security, by means of a reasonable sum, for the immediate payment of the damages which may arise.

(Articles 20, 21, 74, and 105 of the Regulations.)

ART. 58. Individuals or companies which ask to construct or operate a public work, shall direct their petition to the Colonial Secretary, to the Governor-General, or to the corporation which in each case has power to grant the concession, accompanied by the project mentioned in Article 56, and also by a document showing that there has been deposited, as a guarantee of the proposal, 1 per cent of the estimate of said work.

(Articles 23, 75, and 106 of the Regulations.)

ART. 59. The Government, in cases in which it has the right to do so in accordance with Article 54, shall grant the concession, after consulting, in order better to form its judgment, the reports which con-

cern each kind of works which may be established by special laws and by the Regulations, there being necessary as an indispensable requisite for the approval of the project, the previous opinion of the Consulting Board of Roads, Canals, and Ports, or of the Royal Academy of San Fernando, as the case may be.

When according to the provisions of said article a concession has to be granted by the legislative power, the Colonial Secretary shall present to the Cortes the proper form of law, if from the proceedings there should result the approval of the convenience of carrying out the work referred to in the petition.

The Provincial Deputation and Municipal Councils shall follow the provisions of the Regulations for the course of the proceedings to obtain the concession which they may have power to grant, in accordance with Article 54 of the present Law.

(Articles 24, 25, 26, 27, 76, 77, 107, 108, and 109 of the Regulations.)

ART. 60. As a general rule, there shall appear in the terms of every concession, the following:

First. The amount which shall be deposited by the concessionaire as a guaranty of the fulfillment of his engagements, which shall be from 3 to 5 per cent of the estimate of the works.

Second. The time in which the work shall begin and end.

Third. The conditions for the establishment and for the use of the works which in each case may be deemed convenient, in accordance with the laws.

Fourth. The cases of forfeiture and the consequences of this forfeiture.

(Articles 28, 29, 77, 109, and 110 of the Regulations.)

ART. 61. The asking of subsidy after the said concession has been granted shall be considered as a case of forfeiture of a concession included in Article 54. When by means of a law, a subsidy or an aid with public funds in order to execute the work shall be granted, the subsidy or the aid shall not inure directly to the benefit of the former concessionaire, but only to that of the work itself, which shall be immediately offered to public bids in accordance with the provisions of this Law concerning subsidized works.

(Article 29 of the Regulations.)

ART. 62. When more than one petition for the same work is presented, the one shall be preferred which offers the greatest advantages to the public interests. In order to determine these advantages the Colonial Department, or the corporations which, in a proper case, have the right to grant the concessions, shall proceed to obtain the reports provided for by the Regulations.

When the Colonial Secretary has the authority to grant the concession, before deciding on the preference between the petitions, he shall hear the corporation interested and the Department of Public Works of the Council of State.

(Articles 33, 80, 112, 113, and 118 of the Regulations.)

ART. 63. If from the reports referred to in the preceding article it shall appear that there is an equality among the proposals made, the concession shall be granted by means of a public bidding, in which not only the petitioners, but any other person who shall prove that he has made the deposit of 1 per cent of the estimate of the work, may take part.

The bidding shall be, in the first place, on the reduction of the rates of operation, and if in these there should result an equality of reductions, then in the period of the concession. The one to whom the award is made shall be obliged to pay to the signer of the petition which may have been first presented, in case the latter shall not have been the best bidder, the expenses of the project, according to the expert appraisal of the same made before the public bidding.

(Articles 34, 35, 36, 37, 38, 39, 81, 82, 113, and 114 of the Regulations.)

ART. 64. No concession of a public work asked by companies or individuals, can be made without the previous publication of their petition in the Gaceta de Puerto Rico, fixing the period of thirty days for the admission of other propositions which may be better than the first.

(Article 32 of the Regulations.)

ART. 65. When the concession of a public work is made, the Government or the corporations which in a proper case may have granted it, shall supervise, through their technical agents, the construction of the work, in order that the stipulated conditions may be observed. The same supervision shall be observed in connection with the operation, when the works have been completed and when such operation is authorized in the manner prescribed by the Regulations.

(Articles 40, 78, and 110 of the Regulations.)

ART. 66. The concessionaire may, after authorization by the Colonial Department or the corporation which may have granted the concession, alienate the works, provided that the grantee shall obligate himself in the same terms and with the same guarantees as the first concessionaire, for the fulfillment of the stipulated conditions.

ART. 67. The guarantee referred to in the first paragraph of Article 60 shall not be returned to the concessionaire until he has proved the construction of works to an amount equivalent to a third part of those included in the concession. Said works shall then take the place of the guaranty, and shall be liable for the fulfillment of the provisions of the concession.

(Article 28 of the Regulations.)

ART. 68. The declaration of forfeiture of the concession of a public work of those included in this Chapter, whenever made, shall be by the Colonial Department, or the corporation which might have granted it, and always after proceedings in which the interested party must be heard.

(Articles 29, 30, 78, and 111 of the Regulations.)

ART. 69. The forfeiture of the concession by reason of infractions

imputable to the concessionaire, shall always carry with it the loss of the guaranty, for the benefit of the general Provincial or Municipal Administration, as the case may be.

(Articles 31, 79, and 111 of the Regulations.)

ART. 70. If on the declaration of forfeiture the construction of the work shall not even have been commenced, the Administration shall be relieved of all agreements with the concessionaire. If the works have already been commenced, but if they should not be sufficient in order to return his guaranty to the concessionaire, the works constructed shall be offered to public bidding for a period of three months, and the basis of the bids shall be the value of the acquired lands, of the completed works, or the materials thereon. The works shall be awarded to the one who offers most for them, and the new concessionaire shall then pay to the first the amount of the bid, and shall be subrogated to him in all his rights and obligations. In both cases the first concessionaire shall forfeit his guarantee.

(Articles 37, 79, and 111 of the Regulations.)

ART. 71. If on the declaration of forfeiture the guaranty shall have been returned, the works completed by the concessionaire shall in the same way be offered to public bidding, for a period of two months, on the same basis. From the amount offered by the best bidder, who shall be declared to be the owner of the concession, the Administration shall reserve the amount of the returned guaranty, and the difference, should there be any, shall be turned over to the first concessionaire.

(Articles 31, 79, and 111 of the Regulations.)

ART. 72. In the cases of the preceding articles, if there shall not be any auction by reason of an absence of bidders, the executed work shall again be put up for public bids for a period of one month, on the same basis.

If the concession is not awarded in any of the auctions, the State, province, or towns which may have granted the execution of the works shall take charge, and shall use them in the manner deemed convenient, without the right to any claim whatsoever on the part of the concessionaire whose rights shall be declared forfeited.

(Articles 31, 79, and 111 of the Regulations.)

ART. 73. No work for the operation of which there may be necessary the occupation of another work belonging to the State, the Province, or towns can be granted without previous public bidding, on the basis which may be determined for this purpose. There shall be reserved the right of preference on equal terms to the petitioner, and when the concession is not granted to him he shall be paid, by the one to whom it is awarded, the amount of the project according to expert appraisal made and advertised before the public sale.

(Articles 38, 82, and 114 of the Regulations.)

CHAPTER VII.

WORKS SUBSIDIZED WITH PUBLIC FUNDS, BUT WHICH DO NOT OCCUPY THE PUBLIC DOMAIN.

(Articles 89, 90, and 120 of the Regulations.)

ART. 74. Whenever a subsidy of any kind is requested for the execution, by individuals or companies, of a public work which shall not constantly occupy or make use of a part of the public domain, the concession for this purpose, when the subsidy shall be given by a Province or some Municipality, shall be made by the corporation in whose charge the works are, but in every case after public bidding; and if the subsidy shall come from the State, the concession shall moreover be the subject of a law.

By subsidy, for the purposes of this article, is understood any direct or indirect aid whatsoever from the public funds, including the exemption from customs duties on material which is to be introduced from abroad, which exemption must always be granted by a law.

(Articles 73 and 104 of the Regulations.)

ART. 75. The concessions referred to in the preceding article shall always be temporary, and can not exceed ninety-nine years. When this period has elapsed, the work shall become the property of the State, Province, or town which may have granted the subsidy.

ART. 76. The individuals or companies who request a subsidy of public funds to construct a work of those referred to in this Chapter, may ask for the necessary authorization to make the proposed studies in the terms and with the rights mentioned in Article 57 of the present Law. The petition for the concession shall be accompanied by a complete project of the works, according to the provisions of the Regulations, and also a document showing that the petitioner has deposited, as a guaranty for the fulfillment of the propositions which he may have made or admitted in the course of the proceedings, the 1 per cent of the total estimate of the said works.

(Articles 41, 83, and 115 of the Regulations.)

ART. 77. The Colonial Department, or the proper corporation, shall make investigation, as determined by the Regulations, in order to prove the utility of the project. If the work referred to should be included in the plans referred to in Articles 20, 34, and 44 of this Law, it shall not be necessary to make this investigation.

(Articles 41, 83, and 115 of the Regulations.)

ART. 78. When the project is approved in the manner prescribed by the Regulations; when the work has been gone over on the ground by the Engineers of the State, or by the technical officials designated by the Deputation or Municipal Councils, according to circumstances, and when the conditions of the concession are mutually accepted, the Colonial Secretary, in case of State works, shall present to the Cortes the form of law necessary to grant it, in accordance with the provisions of Article 74.

(Articles 41, 42, 43, and 84 of the Regulations.)

ART. 79. When the maximum subsidy which may be given for the projected work has been fixed, by a law in case of State works, or by the Deputation or the proper Municipal Council in case of works in charge of these corporations, the concession shall be offered for public bids on this basis for three months; and it shall be awarded to the best bidder, with the obligation to pay to the petitioner, if he should not be given the award, the value of the studies of the project, in accordance with the expert appraisal made and announced previously to the bidding in the form determined by the Regulations.

(Articles 43, 44, 45, 52, 53, 84, 86, and 116 of the Regulations.)

ART. 80. In order to take part in the bidding, it is necessary to prove that there has been deposited, as a guaranty of the propositions which are presented, the 1 per cent of the total value of the work, according to the approved estimate.

(Articles 43, 84, and 116 of the Regulations.)

ART. 81. In no case can the instrument awarding the concession be executed, until the concessionaire has proved that he has deposited, as a guaranty of the fulfillment of his obligations, 5 per cent of the estimated value of the works.

If the concessionaire allows fifteen days to pass without depositing the guaranty, the award shall be declared to be without effect, with the loss of the deposit referred to in the preceding article, the concession of the work being again put up for public bids for the period of forty days.

The guarantee treated of in this article shall not be returned to the company to which the concession is granted until the works of the concession shall be completely finished and in condition for operation.

(Articles 46, 85, and 117 of the Regulations.)

ART. 82. The provisions of Article 65 of the present law concerning the supervision which the Administration must exercise over the works during their construction and operation, are applicable to subsidized works.

The supervision of subsidized works shall extend also to the economic and mercantile part of the company to which the concession is granted, so that the delivery of the aids or subsidies shall be made in proportion to the executed works, in accordance with the stipulated provisions.

(Articles 55 and 88 of the Regulations.)

ART. 83. No variation or modification whatever may be made in the project which shall serve as the basis of a subsidized concession without a competent authorization of the Colonial Department or of the corporation which might have granted it.

The authorization of the Colonial Department, in connection with works subsidized by the State, can not be granted until after hearing the proper corporation and the full Council of State, and after fulfilling the other requisites required by the Regulations for the execution of this law.

(Articles 47 and 85 of the Regulations.)

ART. 84. When in consequence of the variations referred to in the preceding article the cost of the works is diminished, the amount of the aid or subsidy shall be reduced proportionately to such diminution.

If the variations or modifications should result in increasing the cost, even when by means of them the works will be perfected or advantages obtained in their use or operation, the subsidies and the aids granted by the law of concession shall not for these reasons be increased, unless the contrary shall be provided for by special law.

(Articles 47 and 85 of the Regulations.)

ART. 85. The declaration of forfeiture of the concession shall be made by the Colonial Department in all cases affecting State works, and in the other cases by the Deputation or the Municipal Council which, in accordance with Article 74, may have granted such concessions.

Whenever the forfeiture of a concession with subsidy has been finally declared, the amount of the guaranty which, in accordance with Article 81, may have been required from the concessionaire, shall remain for the benefit of the State or of the proper corporation.

(Articles 48 and 85 of the Regulations.)

ART. 86. Concessions of subsidized public works shall be absolutely forfeited if the work shall not be begun or terminated entirely, or in the parts into which it may have been divided, within the time determined on.

Whenever there is a case of force majeure, and it is duly proved by virtue of an investigation made, as provided by the Regulations, the time may be extended for that absolutely necessary. If the subsidy comes from general funds, the Colonial Secretary must grant the extension of time, after hearing the Council of State.

At the end of the extension the concession shall be forfeited, if within that period the stipulations are not carried out.

(Articles 49 and 85 of the Regulations.)

ART. 87. When by the fault of the company the public service of a subsidized work is interrupted, the Colonial Secretary, the Deputation, or the Municipal Council, as the case may be, shall immediately adopt the necessary measures to assure its provisional operation at the expense of the concessionaire.

Within six months the company must prove that it has sufficient resources to continue the operation, which it may assign to another company or to a third person, after previous special authorization of the Government or the proper corporation. If even by these means the service is not continued, the concession shall be considered forfeited.

(Articles 50 and 85 of the Regulations.)

ART. 88. From the resolution of the Government declaring forfeiture, the concessionaire may appeal by the administrative jurisdiction on contests, within the period of two months from the day on which he may have been notified. When this period has passed without an appeal being made, the decision of the Government shall be considered as consented to.

The concessionaires may also appeal by the administrative jurisdiction of contests, within the same time, from the decision of forfeiture which, according to its powers, may be made by the Deputation or the Municipal Council, after the appeal to the Government shall have been exhausted, in the manner prescribed by the Law.

(Articles 48 and 85 of the Regulations.)

ART. 89. When a forfeiture of a subsidized concession is finally declared, the executed works shall be offered to public bids for the term of three months. The basis for these bids shall be the value, according to appraisal, of the lands acquired, of the completed works, and of the materials of construction and operation thereof, deducting the amounts which, as aid or subsidy, may have been given to the concessionaire in lands, works, cash, or other kind of property.

(Articles 51 and 85 of the Regulations.)

ART. 90. If, at the auction referred to in the preceding article, there should be no bidder, a new auction shall be advertised for the period of two months, on the basis of two-thirds of the amount of the appraisal. If even then the sale should be prevented because there were no bidders, it shall be announced the third and last time, for a period of one month, without stating on what basis.

(Articles 51 and 85 of the Regulations.)

ART. 91. If at any of the three auctions referred to in the previous articles, propositions admissible within the advertised terms shall be made, the work shall be awarded to the best bidder, who shall give in guarantee 5 per cent of the amount of the works which are incompleted and shall receive the concession under the same conditions as were granted in the forfeited one, being substituted to the previous concessionaire in all his rights and obligations, and subject to the provisions of the present Law.

(Articles 51 and 85 of the Regulations.)

ART. 92. From the proceeds of the works publicly sold, which shall be paid by the concessionaire, in the manner prescribed by the previous article, there shall be deducted the expenses of the appraisal and sale, and the rest shall be turned over to whomsoever it may belong.

(Articles 51 and 85 of the Regulations.)

ART. 93. In case the concession should not be awarded at any of the three auctions, the State, Province, or town in whose charge the work may be, shall take charge of all which may have been executed, and shall continue, if it deems it proper, by means of a new concession, which shall be granted in all things in conformity to the provisions of this Law, without the first concessionaire in such case having any right to any indemnity whatsoever.

(Articles 51 and 85 of the Regulations.)

CHAPTER VIII.

CONCESSIONS OF THE PUBLIC DOMAIN AND OF THE DOMAIN OF THE STATE.

ART. 94. Concessions which individuals or companies request for the execution of works which have constantly to occupy or use, a part of the public domain devoted to general use shall in all cases be made by the Colonial Department, which shall follow the provisions established for this purpose in Chapter VI and Chapter VII of this Law, according to whether there are involved subsidized works or those for the execution of which an aid of some sort is asked from the public funds.

(Article 122 of the Regulations.)

ART. 95. Individuals or companies who ask for a concession of the public domain for the construction of a work of general or private use, shall direct their petition to the Colonial Department or its delegates, with a project made in accordance with the Regulations for the execution of this Law. The Colonial Department shall examine the investigations which go to prove the established rights in the public domain which it is desired to occupy, the advantages or inconveniences which might result to the general interests from this work, and the other circumstances which it may be desirable to take into account before the granting of the concession; all of which shall be done in accordance with the provisions of the special laws and of the Regulations.

(Articles 123, 124, 125, 134, and 135 of the Regulations.)

ART. 96. If from the investigation referred to in the preceding article it should appear that the work in question does not hinder or impede the use of the public domain affected thereby, the concession may be granted by the Colonial Department or its delegates, in accordance with the provisions of the special laws of the several works, adding among the general provisions the following:

First. The time in which the works shall commence and be completed.

Second. The conditions for the establishment and use of the work, and the consequences of failure to comply with these conditions.

Third. The guaranty which the concessionaire shall give in order to secure the fulfillment of the stipulated provisions.

Fourth. The cases in which the concession may be declared forfeited, as well as the consequences of such forfeiture.

Fifth. The establishment of maximum rates designated for the use and profit of the works.

(Article 126 of the Regulations.)

ART. 97. If before any decision shall be made concerning the petitions of the public domain referred to in the preceding articles, there should be another or other petitions incompatible with the first, the Colonial Department shall select those which offer the best terms to the public interests, for which purpose an investigation of the competing projects shall be held in the manner determined by the Regulations.

In similar cases, nevertheless, and in those in which it is not believed to be opportune because of special circumstances, the Colonial Department may decide that the concession be given, after a public bidding, in accordance with the provisions of Articles 98 and 99.

(Articles 127, 128, 129, 130, 131, 132, and 133 of the Regulations.)

ART. 98. If, from the investigation referred to in Article 95, it should appear that the work does not hinder or impede the use and profit to which the part of the public domain affected by the work may be devoted, the concession may also be granted by the Colonial Department when it is thus deemed proper for the general interests.

The concession, in the case of the present article, shall always be made after public bidding, which shall be based in the first place on the reductions in the rates approved for the use and profit of the work; and in case of equality of these rates, on the raising of the price which shall previously have been designated for the part of the public domain which shall have to be ceded.

(Articles 135 and 136 of the Regulations.)

ART. 99. The conditions of the concession, when, in accordance with the previous article, it shall have been made through public bidding, shall be those indicated in Article 96; adding that the person to whom the award is made shall be obliged, when he is not the same one who presented the project, to pay the petitioner the expenses which said project may have occasioned him, according to expert appraisal made and published previously to the public sale.

(Article 137 of the Regulations.)

ART. 100. When, for the concessions of the class referred to in Article 98, two or more petitions may have been presented, the Colonial Secretary shall select, by the procedure determined by Article 97, the one which appears most proper to serve as the basis of the public biddings which must determine to whom the concessions shall finally be granted.

(Article 138 of the Regulations.)

ART. 101. The concessions referred to in the previous articles of this Chapter shall be granted for ninety-nine years at most, except in the cases wherein the special laws of public works establish a longer period, or when the concession is granted by means of a special law which may thus determine.

In all cases these concessions shall be understood to be made without prejudice to third parties, and protecting vested rights. The concessionaire shall consequently be responsible for the damages and injuries which the work may occasion to private property, or to the part of the public domain not occupied by him.

(Article 139 of the Regulations.)

ART. 102. When the concession is granted and the guaranty is deposited, an instrument shall be executed in which shall appear the grant of the concession and the stipulated conditions, certifying besides

to the deposit of the guaranty, and adding a printed and authorized copy of this Law and of the Regulations for its execution.

(Article 139 of the Regulations.)

ART. 103. The concessionaire may transfer his concession or freely alienate the works, it being understood, however, that the one who substitutes him in his rights also substitutes him in his obligations, imposed by the provisions of the concession, and that the guaranties which he may have made to cover his liability remain in existence.

Of the alienation or transfer of the rights belonging to the concessionaire, an account shall be given to the Colonial Department or to the corporation which might have granted the concession, for the proper purposes.

(Article 139 of the Regulations.)

ART. 104. When the concession is made, the Administration shall have the right to see that the stipulated conditions are absolutely fulfilled, as well during the execution of the works as during their operation.

The guarantee referred to in the third paragraph of Article 96, shall be returned to the concessionaire when he proves that he has completed the works, and this shall be made to appear in his document of concession.

(Article 139 of the Regulations.)

ART. 105. The declaration of forfeiture of the concession of the public domain, in a proper case, shall be pronounced by the Colonial Secretary, after proceedings have been had in which the interested party shall be especially heard. The consequences of the forfeiture shall be those, which for similar cases are established in Chapters VI and VII of this Law.

When the forfeiture is declared, the instrument granting the concession shall be null, and shall be surrendered.

(Article 139 of the Regulations.)

ART. 106. When a work which shall permanently occupy a part of the public domain, in which there is no public use or profit whatever, is to be carried out by individuals or companies, the administrative authorization which the Colonial Secretary or his delegates is authorized to grant shall be sufficient, in accordance with the provisions of special laws and of the Regulations.

(Articles 141, 142, 143, and 144 of the Regulations.)

ART. 107. The person requesting the authorization referred to in the preceding article shall accompany with his petition a plan in which shall appear the object of the work, the part of the public domain it is intended to occupy, and an estimate of the works.

This project shall be passed through the proceedings prescribed by special laws and the Regulations, before the authorization shall be granted.

(Article 140 of the Regulations.)

ART. 108. When, for the execution or operation of a work requested by individuals or companies, it shall be necessary to occupy permanently a part of the public domain devoted to general use, there shall first be also obtained the authorization of the Colonial Secretary or his delegates. This authorization may be granted without demanding any guaranty, nor the presentation of the project, and by the brief proceedings which are designated by the Regulations.

(Article 145 of the Regulations.)

ART. 109. The administrative authorization is also needed for the execution or operation of a work which affects established servitudes on private property, for the benefit of the public domain.

This authorization shall be granted by the Colonial Secretary or his delegates as in the case of the preceding article; but it may be perpetual, saving always the rights of private property.

(Article 145 of the Regulations.)

ART. 110. For the works devoted to the operation of a private industry, the occupation of matters connected with the public domain may be granted, in accordance with the provisions of this general Law and the special laws of public works; when the concession referred to in the preceding paragraph has been made, the individual or company obtaining it may construct the work and make use of it in the manner in which it may be deemed convenient, without further intervention on the part of the Government than that relating to the safety, policing, and management of the public domain.

(Article 146 of the Regulations.)

ART. 111. When, for the execution of a work, by companies or individuals, devoted to public or to private use, there may be occupied a part of the public domain of the State, the previous concession of the Colonial Secretary shall be necessary, in accordance with the provisions of the articles of this Chapter treating of public domain; but always with the indispensable prerequisite that there be public bidding, at which the project of the petitioner shall serve as the basis.

The bidding shall have for its object the determination of the amount which the concessionaire shall have to pay for the domain ceded, and shall take place in accordance with the formalities necessary for the sale of public lands, the concession being granted to the best bidder.

The petitioner shall have the right of preference on equal terms at the bidding, and in case he shall not take the concession, of being indemnified by the person to whom it is awarded for the expenses of the project, according to expert appraisal made and published before the public sale.

(Article 147 of the Regulations.)

ART. 112. The authorization of the Colonial Secretary is necessary to execute or operate a work, which changes servitudes established in the domain of the State.

This authorization shall be ceded in conformity with similar proceedings to those established by Article 109 of this Law.

(Article 148 of the Regulations.)

ART. 113. The resolutions concerning concessions by competent authority of the public domain, and of the domain of the State, shall be final, saving the appeals which may be proper according to the Laws.

CHAPTER IX.

DECLARATION OF PUBLIC UTILITY.

ART. 114. Before the execution of all work devoted to public use, whoever may construct it, there shall be the declaration of public utility.

From this formality are excepted:

First. The works which are in charge of the State and which are carried out in accordance with the provisions of Chapter III of the present Law.

Second. The works included in the general provincial or municipal plans designated in Articles 20, 34, and 44 of the Law.

Third. Every work, of whatsoever kind, the construction of which may have been authorized by special law.

No work devoted to private use can be declared of public utility.

(Article 149 of the Regulations.)

ART. 115. The declaration of public utility shall carry with it, so far as the individuals who request it are concerned:

First. The right of neighborhood for the builders and their employees, which consists of the use of the objects enjoyed in common in the district of the towns in which the works are situated.

Second. The application of the law of eminent domain to private property, in accordance with the provisions of the said Law and of the Regulations for its execution.

Third. The exemption from the land tax and the property tax on the transfers of property which may take place in consequence of the application of the said law of eminent domain.

The declaration of public utility may also carry with it the exemption from other temporary or permanent taxes, whenever it is thus determined by a special law for each case.

(Article 150 of the Regulations.)

ART. 116. The declaration of public utility, when it shall have been made in accordance with the provisions of Article 114, and shall carry with it the application of the law of eminent domain, shall be made by the legislative power in relation to works which, in the judgment of the Government, are of great importance; by the Colonial Department in reference to works paid for with the general funds of the State, and by the Governor-General in reference to provincial and municipal works.

In case the exercise of the right of eminent domain is not requested, the Municipal Councils shall have the right to make the declaration of

public utility, when the work is municipal and is included in one municipal district; the Provincial Deputation shall make the declaration when the work is provincial and when, being municipal, it is included in two or more towns; and lastly, by the Colonial Secretary when the work is in charge of the State.

(Articles 152, 153, 154, 155, 156, 157, 158, and 159 of the Regulations.)

ART. 117. The individual or company which asks for the declaration of public utility of a work shall annex to his or its petition a complete project, so that judgment thereof may be formed and of its object, of the private property which it shall occupy, and of the advantages which shall accrue to the general interests.

(Articles 151 and 152 of the Regulations.)

ART. 118. Before adopting a resolution, the project shall be submitted to an investigation in which shall be heard, in the first place, all those interested in the condemnation proceedings, if the application of the law of eminent domain is requested; and afterwards the other individuals, officers, and corporations that, for each case, are specified in the Regulations.

When the investigation has been made in the cases in which the declaration of public utility is to be declared by the Cortes, the Colonial Secretary shall present the present form of law. As to the rest, the Colonial Secretary, his delegates, or the proper corporation, shall decide upon the declaration requested, as may be deemed proper.

(Articles 152, 153, 154, 155, 156, 157, 158, and 159 of the Regulations.)

ART. 119. The resolutions which, in relation to public utility, may be adopted by the competent central Provincial or Municipal Administration shall be final, saving the appeals which are proper in accordance with the Law.

(Article 160 of the Regulations.)

CHAPTER X.

COMPETENCY OF JURISDICTION IN MATTERS CONNECTED WITH PUBLIC WORKS.

ART. 120. The administrative jurisdiction to hear disputes, shall hear the appeals against the rulings of the Administration—

First. When the forfeiture of a concession made to individuals or companies in the terms prescribed by this Law is declared.

Second. In all those cases in which the administrative resolutions which are final, affect rights acquired by virtue of rulings emanating from the same Administration.

ART. 121. The tribunals of justice shall have jurisdiction of—

First. Questions which may arise between the Administration and individuals concerning the public domain or private property, and concerning servitudes founded on titles of civil rights.

Second. Questions which may arise between individuals concerning

the preferred right to the public domain, according to the present law, when the preference is founded on titles of civil rights.

Third. Questions relative to damages and injuries occasioned to a third person in his property rights, the alienation of which is not compellable under the right of eminent domain, by reason of the establishment or use of the works which are the subject of the concession, or for any other causes depending on the concession.

CHAPTER XI.

GENERAL PROVISIONS.

ART. 122. Foreign capital which is employed in public works and in the acquisition of lands necessary for them, shall be exempt from reprisals, confiscations, and embargoes by reason of war.

ART. 123. The provisions of the present Law do not invalidate any of the rights acquired prior to its publication and in accordance with the legislation on which they may have been founded.

ART. 124. The proceedings relative to public works which, on the publication of these Laws, may be pending, shall be carried out in accordance with the prior legislation under which they were started, unless the interested parties prefer to submit to the provisions of the present Law.

In case there are several interested parties and they do not agree, the proceedings shall follow the provisions of the former legislation.

ART. 125. The Colonial Secretary may decide that the special laws published in the Peninsula relative to railroads, highroads, waters, and ports may be extended to Puerto Rico, making a report thereof to the Cortes and of the Regulations and instructions for their application, introducing in them the modifications which he may deem proper, but always after the report of the Consulting Board of Roads, Canals, and Ports, and after hearing the full Council of State.

ART. 126. All laws, decrees, and other prior provisions affecting public works which may be in conflict with the present Law are hereby repealed.

Approved by His Majesty by Royal Decree of this date.

Madrid, 21st of May, 1881.

LEON Y CASTILLO.

It is a copy.

FRANCISCO FONTANALS Y MARTINEZ,
Secretary of the General Government.

GENERAL GOVERNMENT OF THE ISLAND OF PUERTO RICO,
OFFICE OF THE SECRETARY,
Bureau of Public Works, Civil Construction, Forests, and Mines.

The Colonial Department on the 21st of May last issued to this General Government the Royal Order No. 234, which is as follows:

YOUR EXCELLENCY: The general Law of Public Works which shall govern in this Island being approved by Royal Decree of this date, and, in compliance with article 2 of said Royal Decree, His Majesty the King (whom God preserve) has been pleased to approve the annexed Regulations for the execution of said Law in this Province. By Royal Order I communicate this to Your Excellency for your information and consequent action.

And the approval of His Excellency having been given on the 13th of the present month, by his superior order there follows the publication of the said Regulations for general information.

Puerto Rico, June 27, 1881.

FRANCISCO FONTANALS Y MARTINEZ,
Secretary of the General Government.

REGULATIONS

FOR THE

EXECUTION OF THE GENERAL LAW OF PUBLIC WORKS OF THE ISLAND OF PUERTO RICO.

TITLE FIRST.

WORKS IN CHARGE OF THE STATE.

CHAPTER I.

PROJECTS AND CONSTRUCTION OF WORKS BY THE METHOD OF ORDINARY CONTRACTS.

ARTICLE 1. In accordance with Article 4 of the General Law and the special laws for each kind of works, the following are in charge of the State:

First. Highroads, railroads, and ports included in the corresponding plans.

Second. Light-houses for the illumination of the coast, and the establishment of all kinds of maritime signals.

Third. The work of retaining within their beds and making navigable the principal rivers, and the drainage of lakes and marshes belonging to the State.

Fourth. Civil constructions for the service of the Administration of the State.

(Article 4 of the Law.)

ART. 2. The Colonial Secretary, who has the administrative management of the works designated in the preceding article, shall make the plans of those which are in charge of the State, following the proceedings laid down in the proper Regulations for the execution of the laws of highroads, railroads, and ports.

(Article 20 of the Law.)

ART. 3. The Colonial Secretary, in conformity with the provisions of Article 23 of the General Law, shall order the study of the works included in the plans of the State, in the order in which they are respectively mentioned and according to the legislative credits which admit of it.

(Article 23 of the Law.)

ART. 4. When the study of any work shall be necessary, the Governor-General may give the proper order to the Chief Engineer of the Province. Said Engineer shall make the estimate of the expenses which the study may necessitate, and shall submit it for superior approval. The Governor-General shall give this approval when the amount does not exceed one thousand pesos, and the Colonial Secretary shall do so in all other cases.

(Article 23 of the Law.)

ART. 5. The Chief Engineer of public works of the Island may delegate the study of the work to such Engineer as he may deem proper among those who are at his orders. If means of communication of great length are under consideration, the study may be made by two Engineers, in which case the intersecting point must first be fixed of the parts of the lines which shall be gone over by each, the work being then terminated and submitted for the superior approval, with entire independence.

(Article 23 of the Law.)

ART. 6. Every project must consist of the following documents:

First. Explanatory memorial.

Second. Plans.

Third. Articles of technical conditions.

Fourth. Estimate.

This last document shall include, besides the cost of the work, the amounts which it may be considered necessary for condemnation proceedings and the drainage necessary for the foundations of hydraulic works, as well as all the other dependencies of the work, with the object of forming an idea of the total cost.

When the projected work may be operated with earnings, there shall be accompanied the schedule of rates which are to be established for its use and profit, and the basis on which the application of the proposed schedule is to be made, as well as a calculation of the proposed gain to the company.

The projects of the works shall be made in accordance with the forms which govern at the time of their formation, as well as the general rules of the service and the special instructions which in each case the general Direction may deem it convenient to establish.

(Articles 23 and 27 of the Law.)

ART. 7. For works of ports, besides the formalities expressed in the preceding article, those provided by the special law concerning the preliminary plans and investigations which must precede the drafting of the final projects, must be observed.

(Article 23 of the Law.)

ART. 8. Works of repair can not be carried out until after the approval of the estimates made by the Chief Engineer of the Province, in accordance with the instructions which exist for this kind of service.

For the preservation of the existing works in charge of the State, the Chief Engineer shall draft annual estimates, giving ample time to admit of superior approval.

(Article 33 of the Law.)

ART. 9. When a work not included in the plans of the State is under consideration, the execution of which shall nevertheless be deemed proper, in the judgment of the Government, the Colonial Secretary shall order that the Engineers make a preliminary project of the work.

This preliminary project shall be drawn in accordance with the instructions which may be given in each case, and shall always consist of a memorial and plans which give a clear idea of the work and of its principal details, with an idea of its cost.

(Articles 21 and 23 of the Law.)

ART. 10. The preliminary project referred to in the preceding article shall be submitted to an investigation concerning the propriety or necessity of the execution of the work, in which shall be heard—

First. All those individuals who may be interested in the work, for which purpose it shall be exhibited in the office of the Secretary of the General Government for a period which shall be announced in the Gaceta de Puerto Rico, and which shall be not less than thirty days.

Second. The Municipal Councils and the Provincial Deputation.

Third. The Boards of Agriculture, Industry, and Commerce of the Province, the districts of which may be interested in the work.

Fourth. The military authorities, the naval authorities, and the Provincial Health Board, in special cases in which it is necessary because demanded by the nature of the work.

Fifth. The Engineers in charge of the service and the Chief Engineer of the Province, so that they may make explanations concerning the claims which may have been made during the investigation.

Said investigation shall be sent to the Governor-General, who shall send the proceedings to the Colonial Department for the proper action.

All the above-named documents shall be sent to the Consulting Board of Roads, Canals, and Ports for the proper report thereon.

(Articles 24 and 23 of the Regulations.)

ART. 11. If, in view of the result of the investigation referred to in the preceding article, it may be deemed convenient or necessary to execute the work in question, the Colonial Secretary shall present to the Cortes the form of law which in this case is necessary in order to undertake the work, in accordance with the provisions of Article 21 of the general Law of Public Works. When this authorization has been once granted, the final study shall be made, which shall follow the proceedings set forth in Articles 3 to 7 of the present Regulations.

(Articles 24 and 28 of the Law.)

ART. 12. If the work should be of admitted urgency, after the requisites provided by Article 21 of the Law shall have been fulfilled, the Colonial Secretary or the Governor-General, as the case may be, shall

decide upon the immediate drafting of the project, without waiting for the making of the estimate of the studies referred to in Article 4 of these Regulations, without prejudice, that as soon as possible, the said estimate shall be made and sent for superior approval.

(Articles 21 and 23 of the Law.)

ART. 13. In fulfillment of the provisions of the general Law of Public Works, the Government shall not include in the general budgets—

First. The credits necessary for the preservation of all existing works in charge of the State, in view of the estimates which the Chief Engineers must annually send for this purpose, as provided by Article 8 of these Regulations.

Second. The credits demanded by the repair of said works, according to the estimates mentioned in the same article.

Third. The amounts necessary for new works, the execution of which is properly authorized in accordance with Articles 21 and 22 of the general Law, and the projects of which are properly approved; said amounts shall include the probable expenses of condemnation proceedings, drainage, and other matters referred to in Article 6 of the present Regulations.

Fourth. The sums which may be reasonably judged necessary to carry out the projects of new works, and of repairs which might have been studied during the corresponding economic year.

Fifth. The amount for the works which it might be necessary to execute because of admitted urgency, in accordance with the provisions of said Article 21 of the general Law.

(Article 22 of the Law.)

ART. 14. The Colonial Secretary shall decide on the method which must be followed in constructing a public work in charge of the State, subject to the provisions of Article 25 of the general Law, and also, in a proper case, to the provisions of the Royal Decree of the 27th of February, 1852, after the Engineers who may have drawn the project shall have been heard, as well as the Chief Engineer of the Province or of the proper service, and of the Consulting Board.

(Article 25 of the Law.)

ART. 15. If the work should have to be executed by the method of management, it shall be constructed by the Engineers of Roads, Canals, and Ports, in accordance with the provisions which exist or might exist in this branch of the service.

If the work shall have to be carried out by the method of contract, the Engineers of the State shall have the right to superintend the construction, in order to see that the special conditions are carried out, make the provisional and the final acceptance, as well as the final estimates; all of which is prescribed by the Regulations of the service.

(Article 30 of the Law.)

ART. 16. If the work shall have to be executed by contract, the public bidding which shall precede it, shall be made in accordance with the

provisions existing for the contracting for such public service, and the Regulations established for that purpose.

ART. 17. In the construction of every public work which shall be carried out by the contract method, and in accordance with the first of the methods indicated in Article 26 of the general Law, there shall govern—

First. The general conditions established, or which in the future may be established, for all kinds of contracts for public works in charge of the Colonial Department.

Second. The technical conditions which form part of the project and which have been approved, together with the latter.

Third. The particular and economic conditions which in each case the Governor-General may establish, in which shall be stated in detail, besides the special clauses which the nature of each contract might demand, the guaranty which is to be given by the contractor as security for the carrying out of his obligations; the times, manner, and places in which payments are to be made; the dates on which the work shall be begun and finished; and the time for which the contractor has to guarantee and be responsible for the solidity and stability of the executed works.

(Article 26 of the Law.)

ART. 18. The studies of projects and the execution of works which are included under the classification of civil constructions devoted to service depending on the Colonial Department, shall be carried out in accordance with the provisions of this Chapter concerning public works in general, without other distinction than that the architects who shall have charge of said constructions shall do the work which, in the other case, is in charge of the Engineers of Roads, Canals, and Ports.

(Article 30 of the Law.)

CHAPTER II.

CONCESSIONS FOR THE CONSTRUCTION, WITHOUT SUBSIDY, OF WORKS INCLUDED IN THE GENERAL PLANS OF THE STATE.

ART. 19. Concessions of public works in charge of the State, which are included in the plans of the same and which are asked for without aid or subsidy of any kind, shall be made by the Colonial Department to the companies or individuals who may request them, after the proceedings laid down by these Regulations.

(Article 54 of the Law.)

ART. 20. The granting of every concession mentioned in the preceding article, shall only be after the drafting of the proper project.

If there is no project drawn by the Engineers of the Government for the work in question, it may be left to private initiative to make the studies, as provided by Article 57 of the general Law of Public Works.

(Article 57 of the Law.)

ART. 21. In the case of the preceding Chapter, the individual or company that may desire to draw the project shall petition the Colonial Department or the Governor-General asking for the proper authorization, which may be given him after he has made a guaranty to pay for the damages which his operations may cause, the amount of which may be fixed, keeping in mind the importance of the project and the special circumstances of the ground which it is to occupy.

In case the authorization is granted, a period shall be fixed for the presentation of the project, the order being published in the Gaceta of the Island.

The petitioner to whom this authorization is granted shall enjoy all the advantages which, in such cases, are granted by Article 57 of the Law, and shall present the project to the Governor-General within the limited time. If this is not done, the authorization which has been granted shall be considered annulled, unless the petitioner shall have asked for and obtained an extension of time for this purpose, which shall only be granted once, all petitions for further extension being ignored.

The guarantee shall be returned to the petitioner when he presents the project, after a certificate showing that he has satisfied all damages which he may have occasioned.

Every individual or company may for itself study the projects of works included in the plans of the State, without the authority referred to in Article 57 of the general Law; but in such case it shall have no right to the advantages granted by said Article.

(Articles 56 and 57 of the Law.)

ART. 22. The projects drawn by individuals for works referred to in the preceding articles shall consist of the same documents and be drawn in accordance with the same forms and provisions which are demanded for the works of the State, as provided by Article 6 of these Regulations.

(Article 56 of the Law.)

ART. 23. On presenting a project to the Colonial Secretary or to the Governor-General, the individual or company that shall have drawn it shall also present, as a guaranty of the fulfillment of his or its obligations, the document which shows that he or it has deposited in the proper place an amount equivalent to 1 per cent of the total estimate for the execution of the work. The Governor-General shall give a receipt for the project to the interested party, stating the day and the hour on which it may have been presented. This receipt shall constitute prima facie proof for every question of priority which may arise in the course of the proceedings.

(Article 58 of the Law.)

ART. 24. The project shall then be sent to the Chief Engineer of the Province, in order that he may go over it on the ground for the purpose of determining exactly the facts which it contains. The expenses

which this may entail shall be paid by the petitioner, who shall deposit their amount in the Treasury of the Province before this work is begun.

Of the result of the comparison, as well as of the other details of the project, the Engineer shall give a detailed report, which shall be sent to the Governor-General to be attached to the other papers.

Thereafter an investigation shall be made directly by the Governor-General concerning the propriety of making the concession, and concerning the proposed rates for the use and profit of the works. In this investigation individuals who might consider themselves interested shall be heard orally, and they may be compelled to answer interrogatories which may be specially framed for each particular case. Thereafter the corporations and officials who, according to the importance and nature of the works, it may be deemed convenient to consult, shall be heard in writing; and in all cases there shall be heard the Provincial Deputation and the Chief Engineer of the Province.

The Governor-General shall send the reports, with his own opinion, to the Colonial Secretary, enclosing the projects which he may have received from the Chief Engineer.

(Article 59 of the Law.)

ART. 25. When the project refers to ports, besides the formalities established in the preceding article, those shall be observed which are established for this purpose by the special Law of Ports and the Regulations for its execution.

(Article 59 of the Law.)

ART. 26. On fulfilling the provisions of the preceding articles, the Consulting Board of Roads, Canals, and Ports shall be heard, which shall give an opinion concerning the project and the rates, and the basis on which they may have made an investigation.

When these formalities have been complied with, the concession may be granted, if proper, in view of the result of the proceedings, by means of a Royal Decree through the Colonial Secretary drawing the proper instrument, which shall be delivered to the concessionaire.

(Article 59 of the Law.)

ART. 27. No variation or modification whatever shall be introduced in the approved project for a concession of this class without the proper authorization of the Colonial Secretary, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

(Article 59 of the Law.)

ART. 28. In every concession, besides the technical conditions of the project for the execution of the work and those of the general ones which may be applicable, there shall govern other particular conditions, in which shall be included the special ones which govern contracts of public works which may be considered proper, according to the result of the proceedings; and there must appear among them the following:

First. The designation of the guaranty which the concessionaire shall

give in security for the fulfillment of his obligations. This guaranty shall be from 3 to 5 per cent of the amount of the estimate, and shall not be returned to the interested party until he has proved the construction of works and the supply of materials to the value of one-third at least of the total cost of the work, according to appraisement made by the Engineers in charge of the superintendence of the work, applying to those which may have been made, the prices of the approved estimate.

The guaranty in every case shall be made where contracted within the term of one month from the date of the granting of the concession, on the penalty of the loss by the concessionaire of all right, including that of the deposit, if this shall not have been done.

Second. The dates on which the concessionaire shall commence and complete the works, as well as the progress with which they shall be constructed in given periods, in order that they may be concluded within the time provided for.

Third. The schedule of rates which may have been approved for the use and profit of the works, as well as the basis for their application.

Fourth. The time during which the concessionaire shall have the right to enjoy the proceeds of the rates referred to in the preceding article, which can not exceed ninety-nine years.

Fifth. The cases of forfeiture of the concession.

Besides this, it must be seen that the concession shall be granted without prejudice to the third party and saving private rights.

(Articles 60 and 67 of the Law.)

ART. 29. Every concession of this kind shall be forfeited if any of the special conditions designated in the preceding article are not complied with, if the preservation of the works during their operation is not properly attended to, and if the operation is not carried on in accordance with the terms agreed upon.

The case provided in Article 61 of the General Law of Public Works shall also be a case of forfeiture.

The declaration of forfeiture shall be made by the Colonial Department, after proceedings in which there shall be heard the concessionaire, the Consulting Board of Roads, Canals, and Ports, and the Board of Public Works of the Council of State. From this decision the interested party may appeal by means of the administrative jurisdiction of contests.

(Articles 60 and 68 of the Law.)

ART. 30. When the forfeiture of a concession has been declared, the Engineers who may have been designated by the Colonial Secretary, shall proceed to make an estimate of the works completed and the materials furnished and their valuation, according to the prices of the approved estimates.

The measurement and the valuation, accompanied by an explanatory memorial and plans which show the state in which the works are found

at the time, shall be sent to the Colonial Department for its approval, after report of the Consulting Board of Roads, Canals, and Ports.

(Article 68 of the Law.)

ART. 31. To every concession which is declared forfeited there shall be immediately applied Articles 69 to 72, both inclusive, of the General Law of Public Works; and for the purpose of the public bidding on the executed works, the valuation made and approved in accordance with the provisions of the preceding article shall serve as a basis.

(Articles 69, 70, 71, and 72 of the Law.)

ART. 32. During the period set forth in Article 64 of the Law of Public Works, there shall be admitted in the General Government of the Island all the projects presented by individuals or companies to carry on the work, the concession of which may have been requested.

In said case, in order that the projects may be admitted, they shall be accompanied by a document which proves that the deposit of 1 per cent, designated in Article 23 of these Regulations, has been made.

ART. 33. When more than one project shall have been presented for the same work, there shall be a comparison on the ground made for each one of them; and the investigations provided by Article 24 shall include the advantages or disadvantages which may result from their comparison, in order to ascertain which is preferable. The same object shall be kept in mind by the Consulting Board of Roads, Canals, and Ports, or by the Royal Academy of San Fernando, as the case may be, on investigating the proceedings of the concession in the manner provided by Article 26.

When the report shall have been made by the proper corporation, the proceedings shall pass to the Division of Public Works of the Council of State, and after this requisite has been complied with, there shall be decided by Royal Decree the preference which shall in each case be given to one of the several competing projects, in order to grant its author the concession requested.

The petitioner or petitioners whose projects shall have been rejected shall have no right to any claim whatsoever.

(Article 62 of the Law.)

ART. 34. When, from the investigations instituted, there should result an equality among the conditions of two or more projects presented for the same work, the concession shall be made after public bidding and on the basis of the project which shall first have been presented to the Colonial Department or to the General Government, excepting the modifications introduced therein in consequence of examinations which shall have been made in compliance with the provisions of these Regulations.

The petitioner of the first project shall in such case show his acceptance of the modifications introduced and his consent to the bidding. If he shall refuse to do either, his project shall be ignored and it shall be returned to him, together with the deposit which he may have made.

Then the person who presented the second project shall have this privilege, and so on, observing the same procedure; and if none of the petitioners signifies his acceptance, it shall be declared that there will be no grant of the concession.

(Article 63 of the Law.)

ART. 35. When the Colonial Department shall have once decided that the concession be granted after public bids, before announcing the sale the project which shall serve as the basis of the bidding, in accordance with the provisions of the preceding article, shall be appraised.

The appraisement shall be made independently by experts named, one by the Governor-General and the other by the interested petitioner. In case of disagreement, a third shall be named by agreement of these two; and if this agreement can not be reached, the appointment shall be made by the proper judicial authority.

In the appraisal there shall be included the material expenses of all kinds occasioned by the drawing of the project, and also the proper interest on the principal advanced to pay for these expenses. To the appraisal thus made shall be added the fees of the experts. When the appraisal has thus been made, it shall be sent for the approval of the Colonial Secretary, who, before rendering a decision, shall hear the Consulting Board of Roads, Canals, and Ports.

(Article 63 of the Law.)

ART. 36. When the amount of the value of the project has been determined, the public sale of the concession shall be announced for a period determined by the Colonial Secretary; and at this sale there may take part not only the authors of the projects presented, but also all those who may desire the concession, providing they show that they have made the deposit of 1 per cent of the estimate of the works.

The bidding shall take place in the capital of Puerto Rico before the Governor-General, and shall be based in the first place on reductions in the schedules of rates of the concession which may have been fixed in the manner prescribed by the third paragraph of article 28.

The proposals shall be sealed and in strict accordance with the form which shall be presented, wherein shall appear in writing the per cent of reduction which the bidder agrees to make on the amount fixed for the sale, this percentage being the same and the only percentage for all parts of the schedule.

When the propositions presented shall have been read, the person who signed the one offering the greatest reduction shall be declared the best bidder, and a minute of the sale shall be made, which shall be sent for the approval of the Colonial Secretary.

(Article 63 of the Law.)

ART. 37. If from the reading of the propositions it should appear that two or more equally advantageous ones have been presented, there shall immediately be a new open bidding, in which only those

shall take part who have signed equal propositions. This bidding shall be based on the reduction of the number of years which, in accordance with paragraph 4 of Article 28 of these Regulations, shall have been fixed for the concession, and shall last at least fifteen minutes, after which it shall terminate when the President so orders, after having given warning three times.

(Article 63 of the Law.)

ART. 38. In all matters not expressly modified by the preceding articles, the instructions approved the 18th of March, 1852, for the conduct of public biddings for public service, shall govern; it being understood that the deposit to take part in the bidding shall only be required from those who are not authors of projects previously presented and not withdrawn or returned for lack of fulfillment of the requisites referred to in Article 34 of these Regulations.

The petitioner whose project shall serve as the basis of the bids shall reserve the right in all cases of preference on equal terms, and, in consequence thereof, of being declared the person to whom the concession is awarded for the amount which shall have been offered by the best bidder. In order to exercise this privilege, he shall take part, either personally or by representative duly authorized, in the bidding, which shall be extended for half an hour in order that the interested party may make the proper declaration, which, in a proper case, shall be stated in the minutes of the bidding. If this half hour shall elapse without a declaration being made, it shall be understood that the petitioner renounces the right to preference on equal terms, and the President shall declare the best bidder the signer of the proposition which is most advantageous.

(Articles 63 and 73 of the Law.)

ART. 39. If the person to whom the award is made shall not be the signer of the proposition whose project shall serve as the basis of the bids, he shall be obliged to pay the latter, within the period of one month, the amount of the appraisal of the project made in the manner prescribed by Article 35 of these Regulations.

(Article 63 of the Law.)

ART. 40. When one of the concessions included in the present chapter of these Regulations shall be granted, Engineers of the Government shall have the supervision of the execution of the works, in order that they may be constructed in accordance with the approved plans. In the same manner they shall have the supervision of the inspection before the work is turned over to the public service, making a minute of this inspection, which shall be sent to the Colonial Department; and lastly, they shall supervise the operation, in order that this may be carried out in accordance with the stipulated conditions.

(Article 65 of the Law.)

CHAPTER III.

CONCESSIONS TO EXECUTE WITH SUBSIDY WORKS IN CHARGE OF THE STATE.

ART. 41. When the work included in the plans of the State is in question, by the method of concession to individuals or Companies and with a subsidy in any of the manners provided in Article 74 of the general Law of Public Works, the provisions of articles 20 to 26 of these Regulations shall be observed in relation to the plans.

The investigations provided for in article 24 shall be applied in this case to the necessity of the subsidy and the amount of the same.

The project, with the schedule of rates proposed for the use and profit of the work, and the investigations which shall have been made in the proceedings, shall be then sent to the Consulting Board of Roads, Canals, and Ports for the final decison of the Colonial Secretary, concerning the approval of the plans and proceeding to draw the basis for the grant of the concession, and for the collection of the means specified in the Schedules, as well as the special conditions as to the points mentioned in Article 28 of these Regulations, in regard to all of which the petitioner must express his acceptance.

In the same manner the kind of subsidy, its amount, and the times and manner in which it shall be paid to the concessionaire in accordance with what may be determined on, shall be fixed, according to the nature of the works and the special laws and Regulations for their execution.

(Articles 76, 77, and 78 of the Law.)

ART. 42. When the bases of the concession have been agreed on and mutually accepted, the appraisal of the accepted project shall be made, which shall be done in the manner provided by Article 35 of the Regulations.

(Article 78 of the Law.)

ART. 43. With the facts referred to in the two preceding articles, the Colonial Secretary shall present to the Cortes the form of law for the granting of the concession.

When the Law is promulgated the concession shall be offered at public auction for the period of three months. No one may take part in these auctions except those who prove that they have made the deposit of 1 per cent of the estimate, as a guaranty of the fulfillment of the offers which they make. The approved estimate shall serve as the basis of the bids, which shall be made on the reduction of the amount of the subsidy.

The bidding shall be made in accordance with the existing rules, and the signer of the most advantageous proposition shall be declared the best bidder, a memorandum being made thereof, which should be submitted for the approval of the Colonial Secretary.

(Articles 78, 79, and 80 of the Law.)

ART. 44. In case of equal proposals concerning the amount of the

subsidy, another bidding shall be made within the period of ten days, by means of sealed bids.

In this bidding only those who have signed the propositions which appear equal shall take part, whose deposits shall be retained. This second bidding shall take place on the basis of the reduction of the schedule of rates, in the manner provided for by Article 36. If in this auction no bid whatsoever shall be made, or if there should again result an equality of the best propositions, there shall immediately be an open bidding made, based on a reduction in the time of the concession, in the manner provided for by Article 37. If the proposer should not make any bid at this open bidding, the one who shall have drawn the lowest number referred to in Article 13 of the instructions of the 18th of March, 1852, shall be declared the best bidder; this drawing by lot shall be made before the same auction board referred to in the preceding article of these Regulations.

(Article 79 of the Law.)

ART. 45. The petitioner whose project shall have served as the basis for the auction, in case he shall not have been declared the best bidder, shall reserve the right of preference on equal terms, of which he may take advantage, thus declaring at the time of the bidding, in the same manner as is provided in Article 38 of these Regulations. In such case the bid shall be awarded him and the concession shall be granted to him

If the petitioner does not take advantage of this right the bid shall be awarded and the concession shall be granted to the best bidder; but in such case the latter shall be obliged to pay to the petitioner who presented the approved project, within the term of one month, the amount of the appraisal, made in the manner provided by Article 42.

(Article 79 of the Law.)

ART. 46. When the concession is granted, the concessionaire shall deposit in the proper place the guaranty for the security of the fulfillment of his obligations. This guaranty shall in such case be an amount equivalent to 5 per cent of the estimate of the works included in the approved plan.

The guaranty shall be made within fifteen days, counting from the date on which the interested party is notified of the granting of the concession, for which purpose he must give a receipt, which shall show the date on which such notice was given him.

If the concessionaire allows the time fixed to elapse without having deposited the guaranty, the award shall be declared without effect, the concession being again open to public bids for the period of forty days, and the interested party forfeiting the deposit of 1 per cent.

The guaranty referred to in this article shall not be returned to the concessionaire until the day when, being finished, the works shall be turned over to the public service, after the proper authorization to that effect.

(Article 81 of the Law.)

ART. 55. Besides the supervision which the Engineers of the Government shall exercise over the execution of the works and their operation, as provided by Article 40 of these Regulations, concerning works without subsidy, said officials shall, in the cases included in this Chapter III, examine into the conditions under which the concessionaire shall receive the subsidy, so that in this connection the stipulations shall also be strictly carried out.

(Article 82 of the Law.)

TITLE SECOND.

PROVINCIAL WORKS.

CHAPTER IV.

PROJECTS AND EXECUTION OF WORKS BY ORDINARY CONTRACTS.

ART. 56. The roads and ports for their respective territories which are of merely provincial interest, and the sanitation of lakes and marshes, referred to in the third paragraph of Article 5 of the Law, are in charge of the Provinces, in accordance with Article 5 of the general Law and the special law of Public Works.

The plans of the works which are to be in charge of the Deputation, shall be made as determined by the Regulations for the execution of the special law of Public Works.

(Articles 5, 10, and 34 of the Law.)

ART. 57. When the plans of the works which are to be in their charge are made by the Deputation, they shall be sent to the Colonial Department by the Governor-General, with his report, showing the reasons therefor.

His approval, if proper, shall be made by Royal Decree, published by the Colonial Secretary.

(Article 34 of the Law.)

ART. 58. When the plans of the works of the Provinces have been once approved, the order of preference fixed for them shall not be changed in the execution thereof, unless after a proposal of the Deputation assigning reasons therefor, which shall be submitted to the report of the Municipal Councils of the towns interested in the proposed works, and of the Chief Engineer of the Province.

The Governor shall send the proceedings, with his report, to the Colonial Secretary, who shall decide on the proposal by means of a Royal Decree, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

(Article 34 of the Law.)

ART. 59. Before the execution of any work included in the plan of the Province, there shall first be a resolution of the Deputation, which shall in such case order the Engineer or his assistant in charge of provincial works, to proceed to the study of the respective project. This

project shall follow, in its draft, the same formulas prescribed for the works of the State, and when it has been once finished, shall pass for the report of the Chief Engineer of the Province.

When this report is made, if it should be favorable, the Deputation may approve the project, or otherwise adopt the necessary measures for its modification, in accordance with the report which may be made by the Engineer.

If the Deputation is not satisfied with the report made by the Chief Engineer, it shall send the project to the Governor-General, in order that it may be submitted to the superior authority; the Colonial Department deciding in such case by means of a Royal Decree, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

(Article 16 of the Law.)

ART. 60. When the execution of a work of those included in the plan shall be decided on by the Deputation, and the project approved in the manner indicated by the preceding articles, the necessary credit for its execution shall be included in the provincial budget.

The work may be carried on by management or contract, which shall be decided on by the Deputation, after hearing the opinion of the expert in charge of provincial works, on this point.

(Articles 36 and 39 of the Law.)

ART. 61. If the works shall be executed by management, it shall be directed by the technical agents of the Deputation, and in accordance with the instructions which these may give, with the approval of the provincial corporation.

If it shall be made by contract, this can not be carried out without public bidding, in accordance in all respects to what is prescribed for similar cases by the laws for the works in charge of the State, in Chapter I of these Regulations.

(Articles 39 and 40 of the Law.)

ART. 62. When a work which is not contained in any of the plans of the province is in question, and it is nevertheless deemed necessary to execute it before the above-mentioned plans, there must in all cases be first made the declaration referred to in the second paragraph of Article 36 of the general Law of Public Works.

For this declaration the proceedings to be followed, shall be started on the proposal of the Provincial Deputation made to the Governor, which must be accompanied by the project of the work in question. The Governor shall submit this proposition to the same proceedings to which the formation of plans of provincial works are subject, thereafter sending them, with his own report, to the Colonial Secretary.

The proceedings shall pass for the report of the Consulting Board of Roads, and shall finally be decided by means of a Royal Decree concerning the requested declaration.

The information above mentioned shall not be necessary when there

shall have been promulgated a law authorizing the execution of the work.

In case the work be of such nature as not to correspond with those which, according to special laws, are covered by the plans of the provinces, after the investigation shall have been made, there shall be presented to the Cortes by the Colonial Secretary a form of decree, in order that its execution may be authorized by the legislative power.

(Article 36 of the Law.)

ART. 63. There shall precede in all cases the concession of public domain and the declaration of public utility to the execution of every provincial work which is not included in the respective plans, in accordance with the provisions of the general Law of Public Works, and according to the proceedings prescribed by title fourth of the present Regulations. Exception is made of the cases provided for in the previous article, when the authorization should have been or shall be granted by law.

(Article 36 of the Law.)

ART. 64. The works of repair and of preservation of the provincial works shall be carried out in accordance with the credits which for this purpose shall be included in the budgets of the Deputation as obligatory expenses, according to the provisions of Article 76, paragraph 3, of the law of May 24, 1878, ordered to be carried out in Puerto Rico on June 17 of the same year, and according to the provisions of Article 15 of the general Law of Public Works. The experts in charge of public works shall make an estimate of the repairs, approval of which shall always precede their execution, as well as the annual estimates for preservation which shall be indispensable and sufficient for the existing works of the province which are in charge of the Deputation. The amounts calculated by the technical officials for such objects shall be necessarily included among the obligatory expenses.

(Articles 15 and 42 of the Law.)

ART. 65. When the work which is to be executed may be the subject of operation with profit, the Deputation shall make the list of rates which it considers proper to establish for its use and profit and shall send it to the Governor of the province. The latter shall send it to the Colonial Department, with his own report, after hearing the Chief Engineer of the province. The approval of the establishment of rates and of the instructions for their application shall be made by means of a Royal Decree by the said Department, with the consent of the Council of Secretaries.

(Article 38 of the Law.)

ART. 66. The appointment of an expert or experts, who shall be charged with the direction of public works, shall be freely made by the Deputation; but this appointment shall always be of individuals who shall be Engineers of the Corps of Roads, Canals, and Ports, or at least Assistants of Public Works. In each case the salary, as well

as the indemnity which shall be given to said officials for the expenses arising from the service, shall be paid from the provincial funds.

(Article 40 of the Law.)

ART. 67. In the same manner, the Deputation shall have the right, in the form in which it may be deemed convenient, to organize the subordinate personnel of all kinds which may have to aid the Chief Expert in carrying out his duties, as well as the appointment of this personnel; all being at the suggestion of the said Chief.

(Article 40 of the Law.)

ART. 68. The Engineers of Roads, Canals, and Ports who may be named by the Deputation for the direction of the service of provincial works, shall preserve all their rights under the Regulations as individuals of the Corps to which they belong, in the same manner as if they were in the service of the State.

Similar rights shall be enjoyed by the Assistants of Public Works who may be named for the same duties, and the same benefit shall inure to the overseers of the said branch who may form part of the subordinate personnel of the provincial service.

(Article 40 of the Law.)

ART. 69. The public works which are executed at the instance of the Provincial Deputation shall be executed under the inspection, in the technical branch, of the Colonial Department. For this purpose the Governor may order that they be inspected during their construction by the Chief Engineer of the province whenever he may deem this opportune.

Besides these extraordinary inspections, the Chief Engineer shall annually make other ordinary inspections of all provincial works.

The Engineer shall report the result of his inspections to the Governor of the province, and if any difficulty is noted in the works he shall so inform the latter.

The Governor, in view thereof, shall give his orders to the Deputation, in order that the difficulties may be corrected. If the Deputation should refuse to do so, or deem it proper to appeal from the decision of the Authority, the proceedings shall be carried to the Colonial Secretary, in order that he may decide the question, after first hearing the opinion of the Consulting Board of Roads, Canals, and Ports.

The expenses of any kind which may be caused by the inspection of provincial works shall be charged to the Deputation.

(Article 43 of the Law.)

ART. 70. Without prejudice to the inspections referred to in the preceding article, every provincial work shall be necessarily inspected by the Chief Engineer of the Province or by the State Engineer, who may be designated for this purpose, before turning it over to public use, and when the Deputation declares that it is terminated.

For this purpose, when such case is believed to have arisen, the Deputation shall inform the Governor, who shall order that the Chief

Engineer make the inspection. Said Engineer shall report to the Governor the result of his commission; and if there are any defects found, proceedings shall be instituted in accordance with the case of the preceding article, the delivery of the work to the public service being suspended until the authorization of the Governor or of the Colonial Secretary shall have been given.

(Article 43 of the Law.)

ART. 71. The provisions of this chapter are applicable to works called civil constructions, devoted to the service, which are in charge of the province, without any other difference than that the plans shall be gone over, when the direction or inspection shall be made, by the proper Architects, in accordance with the provisions of Article 40 of the general Law.

CHAPTER V.

CONCESSIONS FOR THE EXECUTION OF PROVINCIAL WORKS.

ART. 72. Every public work in charge of a province, which is included in the plans of the same, can be carried out by the method of concession to individuals or corporations who may so request, after the proceedings which are established by the general Law of Public Works, and those determined by the present Regulations.

(Article 54 of the Law.)

ART. 73. The concession of every provincial work included in the approved plans shall be granted by the Provincial Deputation, whether a subsidy of any kind has been requested for its execution, or whether in any manner whatsoever aid from the provincial funds has been demanded.

(Articles 4 and 74 of the Law.)

ART. 74. In case the work is requested without subsidy, the petitioner shall present to the Provincial Deputation the project of the work which he desires to carry out. For this purpose he may request the Governor of the province for the authorization referred to in Article 57 of the general Law of Public Works, an authorization which, in a proper case, shall be granted with similar requisites to those referring to works of the State, as determined by Article 21 of the present Regulations.

The projects in all cases shall be drawn as provided for by Article 6.

(Articles 56 and 57 of the Law.)

ART. 75. Within the period designated by the Governor, the petitioner shall present the project to the Deputation, accompanied by a certificate which shows that he has delivered in the depository of provincial funds an amount equivalent to 1 per cent of the estimate.

The Secretary of the Deputation shall give the interested person the proper receipt, stating the day and the hour on which he shall have received the project.

(Article 58 of the Law.)

ART. 76. The project shall be sent to the Chief of the technical service of provincial works, in order that he may go over it on the ground. The said Chief shall investigate concerning the exactness of the facts stated in the project and concerning all the technical details, making his report to the Deputation.

This corporation shall then send the project to the Chief Engineer of the Province, in order that he may make report concerning it in the manner determined by Article 59 of these Regulations, in accordance with which the further proceedings shall follow the provisions necessary for the approval of the project by the Deputation, as if in case of a disagreement between it and the Chief Engineer.

When works in connection with ports are in question, there shall be followed, besides, the provisions concerning the formation of plans established in the special law and determined by the Regulations for its execution.

(Article 59 of the Law.)

ART. 77. The projected schedules of rates which the petitioner proposes to establish for the use and profit of the work shall be submitted by the deputation to a public investigation, in which, for at least a period of ten days, there shall be heard claims of all those who consider themselves interested. After hearing the petitioner as to these claims, and lastly the Municipal Councils of the districts in which the work is to be executed, the Chief of the service of provincial works and the Chief Engineer of the province shall be heard.

When the proceedings are thus closed, the Provincial Deputation shall decide as to the granting thereof by means of a resolution, which shall be published in the *Gaceta* of the Island.

In this resolution, in the proper case, shall be inserted the essential conditions of the concession, which shall be those stated in the general Law of Public Works, and in Article 28, Chapter II, of these Regulations, for concessions of works in charge of the State.

From the resolution of the Deputation, in the proper case, the petitioner may appeal to the Colonial Secretary in the manner provided by Chapter IV of the provincial law in force.

(Articles 59 and 60 of the Law.)

ART. 78. When the concession is granted and the proper guaranty is given, the concessionaire shall execute the works in strict accordance with the stipulations, and under the supervision of the technical officials of the Deputation and the inspection of the State Engineers.

The concessions shall be forfeited in the cases prescribed in the conditions, and shall be declared, if there be proper reason for it, by the Deputation, after previous proceedings, in which shall be heard the interested party, who shall reserve the right of appeal to the Colonial Secretary from the resolution of said corporation.

In case an appeal is made, the Colonial Secretary shall decide, after hearing the Consulting Board of Roads, Canals, and Ports, the conces-

sionaire having the right to appeal from this decision by means of the administrative litigation.

(Articles 8, 65, and 68 of the Law.)

ART. 79. The consequences of forfeiture and the proceedings which have to follow shall be those which are provided by Chapter II of these Regulations for similar cases in works of the State, it being understood that the appraisal of the works provided for by Article 30 shall be made by the expert agents of the Province, investigated by the Chief Engineer and approved by the Deputation, with the right of appeal to the Government in cases of disagreement between them.

(Articles 69, 70, 71, and 72 of the Law.)

ART. 80. When there shall have been presented two or more projects for the execution of the same work, within the period of thirty days, counting from the time in which the first petition was presented, the comparison referred to by Article 76 and other investigations of the proceedings, shall be made in connection with all the projects presented, making a note of the advantages or disadvantages of each one. In this case the Deputation shall select for the granting of the concession the one which, in its opinion, offers the greatest advantages.

(Article 62 of the Law.)

ART. 81. In case there should result from the investigation an equality of circumstances between the projects presented, the Deputation shall resolve to proceed to a public auction, on the basis of the proper project, in accordance with the provisions of Article 34 for the concession of State works.

The appraisal of the project which shall serve as the basis of the bids shall be made by two experts, one named by the Deputation and the other by the petitioner, the third being named by both parties, and, in case of disagreement, by the proper judicial authority.

The appraisal shall be made on the basis designated by Article 35, and shall be submitted for the approval of the Deputation, which shall decide, after first hearing the expert in charge of provincial works.

(Article 63 of the Law.)

ART. 82. The bidding shall take place before the Deputation, and shall follow the similar rules established for this purpose in Articles 36 and 37, the President of the Board having the right to declare who is the best bidder, saving the approval of the said Corporation.

The author of the project which shall serve as the basis of the bidding reserves the right of preference on equal terms, and that of receiving the value of his project, according to the appraisal, in a similar manner to the provisions of Articles 38 and 39 of these Regulations.

(Articles 63 and 73 of the Law.)

ART. 83. When an individual or a company asks for the concession of a work included in one of the plans of the province, with subsidy or aid from the funds of the same, in so far as the presentation, proceedings, and approval of the project are concerned, the provisions of

Articles 74, 75, and 76 of these Regulations shall be observed and concerning the schedules for the use and benefit of the work, it shall be subject to the investigation prescribed by Article 77.

Thereafter the appraisal of the project shall be made, which shall be carried out as provided for this purpose by the rules established in Article 81.

(Articles 76 and 77 of the Law.)

ART. 84. In the case in which the Deputation shall have approved the project, the rates, and other documents of the proceedings, and provided that the petitioner accept the modifications which it may have been deemed convenient to introduce into them by reason of the result of the investigations, there shall follow the granting of the concession which is within the power of a provincial Corporation, after public bidding, at which the approved project shall serve as the basis, and which shall take place before said Corporation, in a manner similar to that provided in Articles 43 and 44 for the cases of works of the State.

In the same case the author of the proposal whose project shall have served as the basis of the bids has the right of preference on equal terms, and to the payment of said project, in accordance with provisions similar to those set forth in Article 45.

(Articles 78, 79, and 80 of the Law.)

ART. 85. The guaranty shall be deposited in the depository of the Deputation, following in all respects the provisions of Article 46 of these Regulations on this point.

Article 47, concerning modifications in projects, and Article 48, concerning forfeitures, which in this case shall be declared by the Deputations in the form and with the same rights of appeal as those set forth in the second paragraph of Article 78, and the provisions of Article 79 are also applicable to concessions subsidized with provincial funds.

Article 49, concerning extension for the termination of the works, and Article 50, concerning the interruption of the operation, are also applicable to the case referred to in the present article.

(Articles 81, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, and 93 of the Law.)

ART. 86. When there shall have been presented two or more propositions to execute a provincial work with subsidy within the time expressed by Article 80, the provisions of said article shall be applied for the selection of the project which shall serve as the basis of the bids, proceeding to the appraisal of said project, and thereafter following, for the carrying out of the bidding and subsequent proceedings, the rules established in Article 82 of these Regulations.

(Article 79 of the Law.)

ART. 87. When there shall have been executed, at the expense of the Deputation, a work which may be the subject of a profitable operation, this operation shall be carried on by contract, the concession thereof being awarded to the best bidder. The bidding shall take place in all respects in accordance with the provisions of this chapter

for concessions of works without subsidy, and there shall serve as a basis for the bidding the schedule of rates made by the Deputation and approved in the manner indicated by Article 65.

If the provincial Deputation should request the operation referred to in this article, the proper proceedings shall be instituted, in which the Chief Engineer, the Governor of the Province, and the Consulting Board of Roads, Canals, and Ports shall report concerning the propriety of the petition, in view of which the Colonial Secretary shall decide what he may deem proper.

(Article 38 of the Law.)

ART. 88. The officials or technical employees of the Deputation shall carry out the duties which belong to them for the works which are executed and operated in accordance with the stipulated conditions, and shall exercise the proper supervision, in order that the concessionaire shall not receive the subsidy except at the times and in the manner provided for by the conditions.

(Article 82 of the Law.)

ART. 89. The Colonial Secretary shall have the final decision concerning the approval of projects, granting of concessions, declarations of forfeiture, and, in general, concerning all the proceedings relative to the construction of provincial public works in which the interested individuals or Corporations may consider themselves prejudiced by reason of the resolutions of the Deputation, and may desire to make use of the right of appeal in accordance with the provisions of the general Law of Public Works.

(Articles 8 and 16 of the Law and Chapters VI and VII of the same.)

ART. 90. The provisions contained in Chapters II and III, which refer to concessions of works of the State, and which have not been expressly mentioned in the present chapter, shall be applicable to concessions of provincial works, with the modifications required by the various cases, the questions which may arise in this connection concerning the application of these regulations being decided according to the spirit of said provisions.

(Articles 6 and 7 of the Law.)

TITLE THIRD.

MUNICIPAL WORKS.

CHAPTER VI.

PROJECTS AND THE EXECUTION OF WORKS BY ORDINARY CONTRACT.

ART. 91. Local roads, the supply of water, local ports, and the drainage of lakes and marshes of merely municipal interest, are in charge of the Municipal Councils, in accordance with Article 6 of the general Law and the special laws of Public Works.

The plans of the works of the Municipal Councils shall be made in accordance with the provisions of the Regulations for the execution of the special laws of Public Works.

(Articles 6, 11, and 44 of the Law.)

ART. 92. The order of preference stated in the plan of the Municipal Council for the execution of the work can not be changed except by virtue of a proposal, giving reasons therefor, by the Municipality, which shall be duly approved by the Governor, after hearing the Provincial Deputation and the Chief Engineer.

(Article 44 of the Law.)

ART. 93. When a Municipal Council decides on the execution of a work included in the plan of the Municipality, the proper project shall first of all be made. This project shall be drawn in accordance with the terms then in force, and once drawn shall be presented to the Governor for approval, who shall grant it only after hearing the Chief Engineer of the Province.

The Governor, when works of great importance are in question, or when he is not satisfied with the opinion of the Chief Engineer, shall submit the project for the approval of the Colonial Secretary, who shall, before granting it, hear the Consulting Board of Roads, Canals, and Ports.

After the project is approved, the Municipal Council shall include in the Municipal budget the corresponding credit to carry out the work.

(Articles 18 and 44 of the Law.)

ART. 94. After the project of a municipal work has been approved, and the proper credit incorporated in the budget, its execution shall be proceeded with by the method of management or contract, as shall be decided on by the Municipal Council, after hearing the expert who shall have drawn the plan.

If the work shall be carried out by management, it shall be directed by said expert in accordance with the instructions in force for municipal works. In case it shall be done by contract, the public bidding in the manner analogous to what is prescribed by these Regulations for the works of the State and of a Province, is an indispensable prerequisite.

(Article 48 of the Law.)

ART. 95. When a work not included in the plan of a Municipality is in question, there shall first of all be made the project by the expert to whom the Municipal Council shall have deemed it convenient to intrust this work.

When the project is drawn it shall be submitted to a public investigation at which shall be heard, within the time which for this purpose is designated by the Municipal Council, all individuals who desire to make any claim concerning the propriety of the execution of the work.

After this investigation is had, the Municipal Council shall send the proceedings to the Governor, with its report concerning said claims, and said authority shall decide what may be deemed expedient, after

hearing the opinions of the Provincial Deputation and the Chief Engineer. When the nature of the work requires it, he shall also hear the Marine Authority or the Military Authority, the Provincial Board of Health, and the Board of Agriculture, Industry, and Commerce, as the case may be.

From the decision of the Governor, the Municipal Council may appeal to the Colonial Secretary who, after hearing the Consulting Board of Roads, Canals, and Ports, shall decide without further recourse.

(Article 46 of the Law.)

ART. 96. When a work which is to be executed affects two or more Municipal Councils, the decision concerning the proposal of preference indicated by Article 92, or the approval of the project referred to in Article 93, or the other points indicated in Articles 94 and 95, can not be made unless the interested Municipal Councils shall have come to an agreement, and unless they have before them the complete project.

If there should be any difference of opinion between the said Municipal Councils, the Governor shall decide, after hearing the Chief Engineer and the Provincial Deputation, the Municipality which may have considered itself prejudiced having the right of appeal to the Colonial Secretary.

(Article 46 of the Law.)

ART. 97. For the construction of public works of any kind Municipal Councils may call for the personal aid of the inhabitants whenever the ordinary revenues, or any other income devoted to such objects, shall not be sufficient. The Municipal Councils in such cases shall follow the provisions of Articles 71 and 75 of the Municipal Law of May 24, 1878, and the other provisions in force concerning this matter.

ART. 98. Municipal Councils may impose special taxes for the use and profit of the works which are executed and which are the subject of profitable operation. The amount of taxes shall be proposed by the Municipality in each particular case, submitting its proposal to the Governor, who, with his report, shall submit it to the Colonial Secretary, who shall decide, by Royal Order, concerning the approval of the proposed tax, communicating the proper instructions for its application to the work in question.

(Article 27 of the Law.)

ART. 99. The work of preservation and repair of existing works in each Municipality shall be paid by the credits previously and necessarily designated for this purpose in the Municipal budget, and always after these budgets have been drawn and approved by the proper Municipal Council.

(Articles 17 and 50 of the Law.)

ART. 100. The Municipal Councils may freely name the technical officials who are to intervene in the works under their charge, it being necessary that those selected shall have the proper professional degree which proves their ability.

The organization of the technical personnel, the management of municipal works, the fixing of the payments, and other matters relative to this part of the service, shall be exercised by the proper Municipal Council, in accordance with the provisions of the laws and regulations in force.

Engineers of Roads and Overseers of Public Works who may be named by the Municipal Councils for the service of municipal works shall enjoy all the rights which are given them by the Regulations, as though they were in the service of the State.

(Article 49 of the Law.)

ART. 101. Public works in charge of Municipal Councils shall be inspected by the employees or technical officials of the State in a manner similar to that prescribed by Articles 69 and 70 of the present Regulations for provincial works.

(Articles 8 and 51 of the Law.)

ART. 102. The provisions of this chapter are applicable to works called civil constructions devoted to municipal service, and which may be in charge of Municipal Councils, without any other difference than that of the experts in whose charge shall be the projects, direction, and supervision, according to existing legislation.

(Article 49 of the Law.)

CHAPTER VII.

CONCESSIONS OF MUNICIPAL WORKS.

ART. 103. The public works in charge of Municipal Councils which are included in the plans of the same, properly approved, can be the subject of concessions to individuals or Companies who may request them, in accordance with the provisions of the general Law of Public Works and of the present Regulations.

(Article 54 of the Law.)

ART. 104. The concessions to which the previous article refers shall be granted by the proper Municipal Councils, provided that no aid of any kind whatever is requested for them, nor any subsidy from the Municipal funds.

(Articles 54 and 74 of the Law.)

ART. 105. Whenever a concession of a municipal work without subsidy is requested, the petitioner shall present to the proper Municipal Council the project of the same. For this purpose he may request the Governor of the province to give the authorization referred to in Article 57 of the general Law of Public Works, proceeding as prescribed by Article 74 of these Regulations concerning provincial works.

(Articles 56 and 57 of the Law.)

ART. 106. The project shall be delivered to the Secretary of the Municipal Council, accompanied by a document which proves that the petitioner has delivered to the depository of municipal funds a sum

equivalent to 1 per cent of the estimate of the works. The Secretary of the Municipal Council shall give a receipt for the project, in which shall appear the day and the hour on which it was presented.

(Article 58 of the Law.)

ART. 107. The expert in charge of municipal works, or the one whom the Municipal Council deemed proper to temporarily name for this special purpose, shall then proceed to go over the plan of the project on the ground, and report in the manner provided by Article 76 for provincial works. The Municipal Council shall send the project thus reported to the Governor of the province, who, after hearing the Chief Engineer, shall decide as to the approval of the project in the manner prescribed by Article 96.

(Article 59 of the Law.)

ART. 108. The schedule of rates for the use and profit of the work shall be submitted for a period of fifteen days to a public investigation, under the direction of the Alcalde, in which all the inhabitants of the town who believe themselves interested may enter claims. The Alcalde shall then send this investigation to the petitioner, in order that he may answer; and shall further hear the expert in charge, and, with the opinion of the full Municipal Council, shall send the proceedings to the Governor. The latter shall decide concerning the approval of the rates in the same manner as is provided for the project by the preceding article.

(Article 59 of the Law.)

ART. 109. After the project is approved and the basis of the contract agreed upon with the petitioner, the Municipal Council shall decide as to the granting of the concession, by means of a resolution, in which a memorandum shall be made and which shall be communicated to the Governor for publication in the Official Gazette of the Island.

The essential provisions of these concessions shall be those provided by Article 28 of these Regulations for similar concessions of works of the State.

From the resolution of the Municipal Council the petitioner may appeal to the Governor, who, after hearing the Provincial Deputation, shall decide without further recourse. The periods for investigation and decision, and the form in which the appeal shall be made, are those designated in Title 5, Chapter I, of the Municipal Law of the 24th of May, 1878, and in the Royal Decree and Regulations of the 12th of December, 1868.

(Articles 59 and 60 of the Law.)

ART. 110. When the concession is granted, the concessionaire shall deposit from 3 to 5 per cent of the amount of the approved estimate, and proceed to the execution of the works under the immediate inspection of the technical officials of the Municipality, and the superior inspection of the State Engineers.

(Articles 51, 60, and 65 of the Law.)

ART. 111. The concession shall be forfeited in the cases provided in the stipulated provisions, and shall thus be declared in a proper case by the Municipal Council, after proceedings in which the interested party shall be heard, and with a right of appeal to the Governor, in the same manner as is provided for in Article 109.

After the Governmental proceedings have been exhausted, the concessionaire shall reserve the right to appeal from the declaration of forfeiture of the concession, by administrative litigation.

When the forfeiture is finally declared, the consequences shall be the same as those provided for by Chapter II of these Regulations for similar works in charge of the State; it being understood that the appraisal of the works executed, to which Article 30 refers, shall be made by the expert employees of the Municipal Council, the approval of the Governor being necessary in the same manner as for projects of municipal works.

(Articles 69, 70, 71, and 72 of the Law.)

ART. 112. In case more than one project is presented for the same work within a period of thirty days, counting from the time the first petition is made, the comparison on the ground, referred to by Article 107, and other investigations of the proceedings, shall be made by comparison between the projects presented, discussing their respective advantages and disadvantages. When these proceedings are ended, the Municipal Council, in view of the result, shall select the project which, in its judgment, offers the greatest advantages, and send it for the approval of the Governor.

The Governor, having in view all the proceedings, after an opinion of the Chief Engineer, shall decide upon the approval in the manner determined by Article 93.

From the decision of the Governor, the Municipal Council, if it deems it proper, may appeal to the Colonial Secretary who shall decide without further recourse.

(Article 62 of the Law.)

ART. 113. If evident advantages appear in one of the projects over the rest, this one shall be preferred for the granting of the concession, which shall be made by the Municipal Council in accordance with the provisions of Article 109.

If it appears that none of the projects presented offers advantages over another, the Governor shall thus declare; and if the Municipal Council does not appeal from this ruling, he shall decide that a public bidding be held, on the basis of the project which has the priority.

Before announcing the bidding, the said project shall be appraised by an expert named by the Municipal Council and another by the petitioner, who, in their turn and before the appraisal, shall name a third, by agreement, to act in case of disagreement. If there should not be an agreement between said two experts on the appointment of a third, he shall be named by the proper judicial authority.

The appraisal shall be made in a manner similar to that designated by Article 35, and the Municipal Council shall give its approval thereto, after the report of the expert in charge.

(Articles 62 and 63 of the Law.)

ART. 114. The bidding shall take place with the Alcalde presiding, assisted by the technical Director, the Treasurer of the Municipal Council and the Secretary of the same, and in accordance with the provisions of Articles 36 and 37.

The concession shall be granted by the Municipal Council to the person who shall be declared the best bidder at the public sale, reserving to the author of the project which has served as its basis the rights of preference on equal terms and of payment of the appraised value of the project, according to the rules established in Articles 38 and 39.

(Articles 63 and 73 of the Law.)

ART. 115. When for the execution of a municipal work a subsidized concession is requested, to be paid from the funds of the Municipal Council, so far as presentation, proceedings and approval of the project, and investigation concerning rates are concerned, the same method shall be followed as is provided by Articles 105 to 107 of this chapter referring to works without subsidy.

When the project is approved, its appraisal shall be made in the manner prescribed by Article 113.

(Articles 76 and 77 of the Law.)

ART. 116. When the project is approved and the basis of the concession agreed upon between the Municipal Council and the petitioner, with the approval of the Governor, the public bidding shall be had, at which the said project shall serve as the basis in a manner similar to that provided for works of the State by Articles 43 and 44 of these Regulations.

The author of the project always has a right of preference on equal terms and of the payment of the appraisal, in accordance with the provisions of Article 45.

(Articles 79 and 80 of the Law.)

ART. 117. The guaranty, which, in case of subsidy, shall be 5 per cent of the amount of the estimate, shall be deposited with the Treasurer of the Municipal Council.

Articles 47 to 50 of the present Regulations, with the corresponding modifications according to the provisions of Article 111, are applicable to this case.

(Article 81 of the Law.)

ART. 118. If there should be more than one project for the subsidized concession of a municipal work, the one offering the greatest advantages shall be selected, which shall serve as the basis for the bidding; and if it is believed that all the projects presented are equal, the one having priority shall serve for this object. When the project which shall serve as the basis for the bidding shall be determined, in one way

or another, the appraisal shall be previously made; and for the rest there shall be applicable in this case the same provisions which for similar cases are prescribed by the present Regulations in Article 112, and in those referring to works of the State and of the Province.

(Article 68 of the Law.)

ART. 119. When a work which shall be executed with municipal funds may be the subject of profitable operation, and the plan of rates for its use and profit shall have been approved in the manner prescribed by Article 98, such operation shall be carried out by contract, after public bidding, which shall take place according to provisions similar to those indicated by Article 36 for works of the State without subsidy.

The Municipal Council can not take charge of the operation of this class of work without previous authorization from the Government, and with formalities similar to those established by Article 87 for provincial works.

(Article 47 of the Law.)

ART. 120. When works, the concession of which is requested, affect the territory of two or more Municipal Councils, proceedings shall be had in each one of them independently as to the examination of the projects and the investigations referred to in this chapter; sending the proceedings to the Governor through the respective Alcaldes.

The Governor shall decide concerning the approval of the projects as provided for by this chapter.

After the granting of concessions, declaration of forfeiture, and other resolutions which may be made by Municipal Councils, they shall come to some agreement; and if they should not be able to do so, the Governor shall decide, with a right of appeal to the Colonial Secretary, and a further appeal by means of administrative litigation.

(Articles 8 and 16 of the Law, and Chapters 6 and 7 of the same.)

ART. 121. The provisions of Chapters II and III, of which no special mention has been made here, are applicable to concessions of municipal works, with the modifications which the various cases require, the doubts and questions which may arise being decided according to the spirit of these provisions.

TITLE FOURTH.

CONCESSIONS OF WORKS NOT INCLUDED IN PLANS OF THE STATE, OF THE PROVINCE, AND OF MUNICIPAL COUNCILS.

CHAPTER VIII.

CONCESSIONS OF THE PUBLIC DOMAIN.

ART. 122. When individuals or Companies ask for the execution of public works which are not included in the plans formed by the State, the Province, and the Municipalities, prior to the granting of the concession there shall be the grant of the public domain which may be affected by the work, and the declaration of the public utility thereof.

The concession of the public domain in every case must be given by the Colonial Department or its Delegates.

If the work the concession of which is requested should alter in any manner the plans referred to by the preceding paragraph, the provisions of the second paragraph of Article 54 of the general Law of Public Works shall also be observed.

(Article 94 of the Law.)

ART. 123. In the concession of works which affect the public domain the following cases are distinguished:

First. That the work in question does not hinder or impede the enjoyment or general use of the part of the public domain which it affects.

Second. That it hinders or impedes the said general use.

Third. That it permanently occupies a part of the public domain in which there is no use or general benefit.

Fourth. That it temporarily occupies a part of the public domain devoted to general use.

Fifth. That it alters established servitudes on private property for the benefit of the public domain.

(Article 95 of the law.)

ART. 124. The person requesting the concession of a work affecting the public domain in the manner designated in the first number of the preceding article shall present his petition to the Colonial Secretary or to the Governor-General of the Island, accompanied with a project based on the following documents:

First. An explanatory memorial, in which a clear idea is given of the work the execution of which is requested, and in which it is shown that neither by it nor by its operation the general use of the part of the public domain which may be affected by said work shall be impaired.

Second. Plans which show the situation, principal dimensions, and the other details of the work.

Third. An approximate estimate, in which, besides the calculation of the cost of the same, shall appear the value of the part of the public domain affected.

Fourth. The rates which it is proposed to establish for the use and profit of the work.

The petitioner shall accompany with the project a document showing that he has deposited in the general Depositary-Treasury, or in the Government Treasury of the Island, an amount equal to one-half of 1 per cent of the estimate of the works which shall be built on lands of the public domain.

(Article 95 of the Law.)

ART. 125. The Colonial Secretary shall examine into the investigations to clear up the rights established on the public domain which it is proposed to occupy, the advantages or disadvantages which might result to the public interests from the work, and the other circumstances which it may be advisable to take into account before the granting of the concession.

These investigations shall be proceeded with in accordance with the provisions prescribed by the Regulations for the execution of the special laws of Public Works, the opinion of the Deputation being in all cases indispensable, as also that of the Chief Engineer and of the Governor of the province, besides that of the Consulting Board of Roads, Canals, and Ports.

(Article 95 of the Law.)

ART. 126. The concession, if it shall be proper, shall be made by Royal Decree, except in the case that the work shall alter some of the plans of the State, according to the provisions of the second paragraph of Article 122 of these Regulations. In the concession there shall be stipulated the clauses and conditions which are set forth in Article 96 of the general Law of Public Works, and, besides, the times and terms in which the State shall be paid the price at which the part of the public domain it is to cede shall be valued.

The guaranty which it is necessary for the concessionaire to give shall be 3 per cent of the estimate of the works which shall occupy the public domain, and shall be returned when he has proved that he has completed the works, as provided for by Article 104 of the general Law of Public Works.

The conditions of forfeiture in these cases shall be the same as those for concessions without subsidy established by Chapter II of these Regulations.

(Article 96 of the Law.)

ART. 127. In the case in which, according to the provisions of Article 97 of the general Law of Public Works, more than one petition for the same work is presented, the investigations referred to in Article 125 shall cover, moreover, the question of the advantages or disadvantages which might result by a comparison between the competing projects; and the one shall be preferred which offers the greatest advantages, or, in case of equality, the first one which shall have been presented.

Thirty days shall be declared to be the time within which propositions may be presented for the execution of the work, counting from the publication of the first petition. After this period has elapsed, no other new petition shall be admitted.

(Article 97 of the Law.)

ART. 128. The Colonial Secretary, nevertheless, in cases where there is not a marked preference between the proposals, or in any other case in which he may deem it convenient to the general interests, may order that the concession be made by means of public bids. In this bidding not only the proposers who have presented their projects may take part, but also any person who shall have made the deposit of one-half of 1 per cent provided by Article 124.

(Article 97 of the Law.)

ART. 129. For the bidding, the project which shall first have been presented shall serve as the basis, provided that its author shall have

accepted the modifications which the superior authorities may have deemed proper to introduce therein. In case of failure to accept these the deposit and project shall be returned, and the second project shall be taken up, proceeding with it in the same manner, and thus successively until the last; it being understood that no concession shall be granted if none of the petitioners accepts the modifications introduced.

(Article 97 of the Law.)

ART. 130. The project which, according to the previous article, shall serve as the basis for the bidding shall be appraised prior thereto, in the manner provided by Article 34 of these Regulations.

(Article 97 of the Law.)

ART. 131. The bidding shall be made, in the first place, upon the percentage of reduction in the rates approved for the use of the works, and in case there are equal propositions a new open bidding shall be held between the signers of the propositions, which shall be based on the raising of the price which has been assigned to the part of the public domain which it should be necessary to grant.

If the bidders should not make any proposition concerning this betterment, the one who shall have drawn the lowest number by lot before proceeding to the opening of the bids shall be declared the best bidder.

(Article 97 of the Law.)

ART. 132. The petitioner to whom belongs the project which has served as the basis of the bidding shall have the right of preference on equal terms if he so declares at the time of the public sale, which shall be extended for one-half hour for this purpose, so that he may make use of this right, which shall appear in the minutes. If he should not do so, the person who shall be declared the best bidder in the public sale shall be considered the concessionaire, by means of a declaration made by Royal Decree, issued by the Colonial Department after the deposit of a guaranty equivalent to 3 per cent of the amount of the estimate of the works affecting the public domain.

The one to whom the award is made shall, moreover, pay petitioner whose project has served as the basis of the public sale the amount of said project, in accordance with the appraisal made as provided by Article 130.

(Article 97 of the Law.)

ART. 133. The concessionaire shall pay to the State the value at which the part of the public domain which has to be granted has been fixed. This payment shall be made at the times and in the manner determined by the provisions of the concession.

(Article 97 of the Law.)

ART. 134. When a work included in number 2 of Article 123 of these Regulations is in question, the petitioner for the concession shall present the project referred to in Article 124.

The memorial shall show the necessity for the occupation of the public domain, showing besides in what manner and to what extent the work will affect the general use established thereon.

In the proposal, besides the value of the part of the domain which is to be occupied, the damage to the general use caused by the execution of the work shall be stated, including both in a single amount.

With the project shall be accompanied the receipt for the deposit of an amount equivalent to 1 per cent of the estimate of the works which shall have to be established on lands of the public domain.

(Article 95 of the Law.)

ART. 135. After the project is presented it shall be submitted to the investigations laid down by Article 123, the Colonial Secretary having the right to approve it. If the work changes the plans of the State, there shall be presented to the Cortes the proper form of law, in the manner prescribed by Article 54 of the general Law of Public Works.

In every case the concession for a work of this class can not be granted without public bidding, as determined by Article 98 of the same law.

(Articles 95 and 98 of the Law.)

ART. 136. At the bidding the project approved shall serve as the basis, and the proposals shall be made in the first instance on reductions in the rates for the use of the work, and in case of equal propositions, on the raising of the value of the public domain which shall have to be granted, according to the figure which for this purpose shall have been fixed in the approved estimate, as provided by Article 134.

(Article 98 of the Law.)

ART. 137. The concession shall be granted to the best bidder by means of a Royal Decree, in which shall be fixed the clauses and conditions indicated in Article 126, and the times and manner in which the concessionaire shall pay to the State the amount which shall have been fixed for the value of the part of the public domain occupied, and the damages for the loss of its general use.

The guaranty shall be 5 per cent of the estimate of the works which shall be executed on lands of public domain, and shall not be returned until the concessionaire shall have shown that he has completed the works of the concession, as provided by Article 104 of the general Law of Public Works.

The conditions of forfeiture shall be the same as those established by said Article 126 of these Regulations.

(Article 99 of the Law.)

ART. 138. Whenever for the same work two or more petitions for concessions are presented, the selection of the project, which is to serve as the basis of the biddings, shall be proceeded with in accordance with the provisions of Articles 127 and 129, as the case may be, observing for all other purposes the provisions of Articles 130, 131, and 132.

(Article 100 of the Law.)

ART. 139. The concessions referred to in the previous articles of this chapter are subject, as to their terms and their general provisions,

the formalities of the grant, the right of alienation on the part of the concessionaire, the supervision of the works and the cases of forfeiture, to the provisions established for each of these points in Articles 101 to 105, both inclusive, of the general Law of Public Works.

(Articles 101 and 105 of the Law.)

ART. 140. When the work, the concession of which is demanded, is included in case number 3 of Article 123, and in consequence part of the public domain which will be affected is not devoted to any use or benefit whatever, the petitioner shall present the project drawn according to the following conditions:

First. A memorial in which the object of the work is stated and the part of the public domain which is to be occupied, and proof that said part is not devoted to any general use.

Second. Plans which give a clear idea of the dispositions of the works.

Third. Approximate estimate of the same.

There shall be accompanied, besides, the rates which shall be established for the use of the work and the bases for their application.

(Article 107 of the Law.)

ART. 141. The project shall thereafter be the subject of an investigation, at which all the officials or Corporations shall be heard that in each case may be designated by the special laws of Public Works and the Regulations for their execution; and among them there shall always be consulted the Chief Engineer of the province and the Governor-General, who shall be the one to direct the investigation and who shall forward its result to the Colonial Department.

The Secretary, by means of a Royal Order, shall decide as to the concession, after hearing the Consulting Board of Roads.

(Article 106 of the Law.)

ART. 142. In case more than one petition for the same work is presented, all shall be submitted to a competitive examination during the investigations referred to in the preceding article, and the one shall be selected from among them which offers the greatest advantages to the public interests, and, in case of equality among them, the one which has first presented; and in neither of these cases shall the other petitioners have any right of indemnity whatsoever.

(Article 106 of the Law.)

ART. 143. The essential clauses of the concessions referred to by article 140 and the following articles shall be—

First. The guaranty which the concessionaire shall give in security for the fulfillment of his obligations. This shall not exceed 1 per cent of the estimate of the works affecting the public domain, and shall be returned to the interested party when the works have been executed to the value of one-third part of said estimate.

Second. The dates on which the works are to begin and end.

Third. The term of the concession, which may be perpetual in cases in which the special laws of Public Works so provide.

(Article 106 of the Law.)

ART. 144. These concessions shall be forfeited when the stipulated conditions shall not be fulfilled, and then shall follow proceedings similar to those provided by Chapter II, Title I, of these Regulations concerning concessions of works of the State without subsidy.

(Article 106 of the Law.)

ART. 145. When the work which is to be executed comes within the case of number 4 of Article 123, the petitioner may state his desires in a petition directed to the Governor-General, who, following the procedure determined by the Regulations of the Special Laws and after hearing the Chief Engineer, shall decide concerning the authorization requested, imposing the proper conditions for the enjoyment of the concession. From the decision of the Governor-General the interested party shall have the right of appeal to the Colonial Secretary, who shall decide finally.

By means of similar proceedings a request included in paragraph 5 of Article 123 of the Regulations shall be decided, provided that the concession be temporary; but in case a perpetual concession be requested the decision shall be made by the said Colonial Department.

(Articles 108 and 109 of the Law.)

ART. 146. Grants of the public domain may be made for works devoted to the carrying on of a private industry in accordance with Article 110 of the Law. The Special Law of Public Works and the Regulations for its execution show the proceedings which in each case shall be followed in order to obtain the concession which it is proper to grant, the clauses which it shall contain, and the intervention in this matter belonging to the administrative officials.

(Article 110 of the Law.)

ART. 147. If, in accordance with Article 111 of the general Law, it is requested that a company or an individual be given the concession of part of the domain of the State for the construction of a work devoted to public or private use, the same proceedings shall be observed as are prescribed in the present chapter for the granting of the public domain; but nevertheless the following provisions shall be kept in mind:

First. In this case the concession shall always be made after public bidding, which shall be based on a price better than that approved in the estimate, as affects that part of the domain of the State which is to be granted.

Second. This public bidding shall take place in accordance with the proceedings and the requisites established by the laws and instructions in force for the alienation of public lands, and the amount of the public sale shall be paid in the manner provided in the same legislation.

Third. In order to take part in the bidding, a deposit of 1 per cent of the amount of the estimate of the works shall be made, and the guaranty

shall be 5 per cent of the same estimate, which shall not be returned until the complete termination of the works.

And fourth. In case of the forfeiture of the concession the concessionaire shall lose the guaranty and the amounts which he may have paid for the value of the granted domain, the State taking charge thereof for the use which it may deem proper.

(Article 111 of the Law.)

ART. 148. If the work which is to be executed changes servitudes established for the benefit of the public domain of the State, the concession thereof shall be granted by the Colonial Department or the Governor-General, according to whether it is perpetual or temporary, and in accordance with the proceedings provided for by Article 145 of the present Regulations.

(Article 112 of the Law.)

CHAPTER IX.

DECLARATION OF PUBLIC UTILITY.

ART. 149. The declaration of public utility of the work petitioned for shall precede the execution of all public works the concession of which is requested by individuals or Companies, in the cases which are not excepted by Article 114 of the general Law of Public Works.

(Article 114 of the Law.)

ART. 150. In all petitions for the declaration of public utility, two cases shall be distinguished; that is to say:

First. That there is not asked in any grant the benefit of neighborhood referred to in the first paragraph of Article 115 of the general Law.

Second. That, in addition, condemnation of private property under the laws of eminent domain is requested for the benefit of the projected work.

(Article 115 of the Law.)

ART. 151. In the first case of the preceding article, the petitioner shall present a preliminary project, which shall serve as the basis for investigation, in the manner prescribed by the following articles. This preliminary project shall contain an explanatory memorial, general plans of the works, and an idea of its cost.

(Article 117 of the Law.)

ART. 152. If the work should be of a municipal character and should be included within one single district, the preliminary plans shall be submitted to a public investigation for a period of fifteen days, the Municipal Council having the right to declare the utility, in view of the result of this investigation.

If the work, being of a municipal character, affects more than one town, the information shall be made in all those which may be interested; and thereafter each Municipal Council, by means of its respective Alcalde, shall send the proceedings to the Provincial Deputation,

which in this case shall have the right to make the declaration of utility.

(Articles 116 and 117 of the Law.)

ART. 153. If the work should be of a provincial character, the preliminary project shall be submitted to an investigation of the interested Municipal Councils, and in view of these the Provincial Deputation shall decide concerning the declaration.

(Articles 116 and 118 of the Law.)

ART. 154. In case the work should affect general interests and, as a consequence, the character of a State work, the investigation on the basis of the preliminary plan shall begin by hearing the interested Municipal Councils, thereafter the Provincial Deputation; and the Governor-General shall send to the Government the proceedings, in order that it may make the declaration by Royal Decree, issued by the Colonial Department.

(Articles 116 and 118 of the Law.)

ART. 155. When the declaration of public utility shall come within the second case of Article 150, and it shall be desired to have a right of condemnation of private property under the laws of eminent domain, the petitioner shall draw the project in accordance with the provisions determined by Article 6 of these Regulations for works of the State, adding the amount of the tax and the calculation of the probable earnings of the Company.

The petitioner shall also present the documents which he may deem proper in order to prove the necessity of the declaration of utility, and shall add to the project a statement, according to the municipal districts, of all the proprietors whose estates shall have to be occupied by the execution of the work.

The project shall be delivered by the petitioner to the Governor-General, who shall have charge of directing the investigation which is to precede the declaration.

(Articles 116 and 118 of the Law.)

ART. 156. If the work should be of a municipal character the Governor-General shall announce in the *Gaceta* of the Island the petition, together with the list of names of the parties interested in the condemnations, ordering at the same time that the petitioner proceed to a survey of the works on the ground, of which he shall notify the Alcalde of the district in which the work is to be executed, to the end that he give notice to the interested owners and inform them of the day or days the said survey is to take place.

The petitioner or his delegate shall then proceed, on the days fixed, to the said survey, hearing on the ground the owners of the estates which the works will have to occupy and giving orally such explanations as they may desire.

Within twenty days following the termination of the survey the parties interested in the condemnation proceedings may make whatever

claims they may deem pertinent as to their rights, and shall direct the same to the Alcalde of the proper town.

The Municipal Council, after hearing the technical Director of the Municipal Works, shall deliberate concerning the claims presented and as to whether the utility should or should not be declared, and the Alcalde shall send to the Governor-General the proceedings, with the report which might have been agreed upon by the Municipal Council or with his own report.

The Governor-General, after first hearing the petitioner and the report of the Chief Engineer and of the Provincial Deputation, shall make the declaration of public utility by a resolution, setting forth the reasons, which shall be inserted in the Official Gazette of the Island.

(Articles 116 and 118 of the Law.)

ART. 158. If the work should be of a provincial character, the Governor shall follow all the proceedings provided for by Article 156, and shall decide on the declaration, after hearing the Provincial Deputation, the petitioner, and the Chief Engineer.

(Articles 116 and 118 of the Law.)

ART. 159. When works are in question which affect the general interests of the State, the declaration of public utility shall be made by the Colonial Department, or by means of a Royal Decree, after following all the proceedings prescribed by the two preceding articles, and after report from the Consulting Board of Roads, Canals, and Ports concerning the proceedings sent by the Governor-General.

(Articles 116 and 118 of the Law.)

ART. 160. From the decisions which, in connection with public utility, the Administration may render there shall be the right of appeal by administrative litigation, in order that, before the hierarchical superior, and after the latter has rendered a final decision, the administrative litigation shall be proceeded with, when in the proceedings begun for this purpose there was some error in the form of procedure infringing on the provisions which regulate the course which is to be observed.

(Article 119 of the Law.)

Approved by Royal Order of this date.

Madrid, May 21, 1881.

LEON Y CASTILLO.

INSTRUCTIONS FOR PUBLIC BIDS.

INSTRUCTIONS

OF MARCH 27, 1869,

IN FORCE FOR PUBLIC BIDS, IN CONNECTION WITH PUBLIC WORKS OF PUERTO RICO.

The following Decree has been sent to Your Excellency, the Superior Civil Governor of this Island, through the Colonial Department:

EXECUTIVE BRANCH, COLONIAL DEPARTMENT,—NO. 157.—YOUR EXCELLENCY: In view of Your Excellency's letter, No. 449, dated December 30, ultimo, transmitting a copy of the proceedings instituted by the General Inspection of Public Works, in order to formulate a plan of Instructions for public bids in connection with this branch of the service, the Executive Branch, in the exercise of its duties, has been pleased to approve the annexed Instructions, in conformity with the report of the Consulting Board of Roads, Canals, and Ports. May God preserve Your Excellency many years.

Madrid, March 27, 1869.

L. DE AYALA.

And their execution having been decided upon by the Most Excellent Superior Civil Governor, they are published in the *Gaceta oficial* for general information.

Puerto Rico, April 17, 1869.

MIGUEL MARTINEZ DE CAMPOS.

The instructions to which the foregoing decree refers are as follows:

ARTICLE 1. The public bids in connection with public works of Puerto Rico, whether the object may be the contracting of works or the furnishing of materials or property, or the sale of surplus stock on hand, shall be advertised in general, with previous notice of thirty days; in urgent cases this time may be reduced, but never to less than ten days.

The advertisements shall be drawn in accordance with the annexed form and shall be published by means of proclamations in the locality or localities where the works are to be executed, or the collection of goods are to be gathered, or sold, and, besides, shall be inserted three times in the *Gaceta Oficial;* the publication of the proclamations and the insertion in the *Gaceta* must be made in time for the notice above stated.

ART. 2. The provincial guaranty which is demanded in order to take part in the bidding, shall not be greater than 5 per cent of the estimate or appraisal, nor less than 2 per cent of the same.

ART. 3. The public bids in connection with the service of the State and of the Departments shall take place in the capital before a Board composed of the Director of the Local Administration, the General Inspector of Public Works, the Chief of the Bureau of Accounts of the Direction, and an Officer of the Administration under the orders of the General Inspection.

Those in connection with the Municipal service shall take place in the corresponding locality in the presence of the Mayor (Corregidor or Alcalde), a Syndic, a Depositary, and a Member of the Municipal Board commissioned by it for this purpose.

ART. 4. The proceedings of each public bidding shall contain all the documents which shall go to make up the contract, stating therein the date of its approval, the order for the public bidding, and the proof that the requisites demanded by Article 1 of these Regulations have been fulfilled.

ART. 5. On the day and hour and at the place designated, the Board shall convene, and shall open the proceedings of the public sale, the President making this announcement and reading the advertisement of the public bidding and the present Instructions. The interested parties shall deliver to him the documents containing the proposals, which shall not be received after the first half hour; when this time has passed, the President shall make the announcement, so that if he may deem it opportune he may make the explanations which the bidders may desire. After the President has cleared up any doubts which may have arisen, he shall proceed to make a list and drawing by lot and enumeration of the documents presented, without permitting any further interruption, nor the withdrawal of any proposal.

ART. 6. The drawing by lot shall be made by means of a box having a number of numbered papers corresponding to the documents which might have been delivered, and in another there shall be placed the said documents. The Member of the Municipal Board, who acts as Secretary thereof, shall draw a document and one of the bidders shall draw a paper, and on the document there shall be written the number corresponding to the paper; thereafter the Secretary shall draw another document, and another bidder shall draw another paper, the number of which shall be stamped on the envelope, and so on. Immediately thereon the documents shall be opened in the order of their numeration, rejecting immediately and returning to their authors those which may not comply strictly with the requisites demanded by the advertisements, and reading the other aloud.

ART. 7. When the reading has been finished a statement shall be made in the minutes as to which proposition is the most advantageous, returning to the authors of the others their respective receipts. If there should be several equal in terms, a new public oral bidding shall be held among their authors for the period of fifteen minutes; and in case another equality should result among any of them, the prefer-

ence shall be given to the proposition, the number of which is lower than the other ones who have made equal propositions, the proper declaration thereupon being made.

ART. 8. There shall be annexed to the account of proceedings the envelopes and propositions presented and the instrument of guaranty of the best bidder; and also the memorandum which shall be drawn in accordance with the annexed form, and in which shall also be stated the incidents which occurred at the bidding, if there should be any. Finally the account of the proceedings shall be sent to the Authority who may have the right to approve the public sale.

Madrid, March 27, 1869.

L. DE AYALA.

FORM OF THE DOCUMENT OF ADMINISTRATIVE CONDITIONS.

ARTICLE 1. In the execution by contract of (*such a work or service*) there shall, besides the general document of conditions of December 25, 1867, and of the technical conditions approved in ———, be assigned the following administrative and economic provisions:

ART. 2. The bidder to whom the work (*or service*) shall have been awarded shall have the period of fifteen days, counting from the date on which he is notified of the approval of the public sale, in order to constitute the final guaranty and to draft the instrument constituting the contract.

ART. 3. The guaranty shall be composed of ——— crowns (escudos) in coin, or their equivalent in paper of the consolidated debt of the State, at the rate of —— [Here there may be added "and also of —— per cent, which shall be retained in each one of the payments which shall have to be made successively in accordance with the following article, which shall cease to be deducted when the total of the deposit and of the amounts retained shall be equivalent to a tenth part of the estimate"]. The provisional deposit made in order to take part in the public bidding may form part of this guaranty, exchanging the receipt for another stating that it is devoted to this new object.

ART. 4. The contractor shall have the right to the monthly payment of the amount of the work which he may be constructing, in accordance with the certificate of the Engineer. If from the date of one of these documents more than one month shall pass, without payment being made, toward the end of said month the contractor shall be credited with 1 per cent per month on the amount earned, which he shall have collected. (When the works are of little importance, two or three dates may be fixed for the payment to be made to the contractor, always granting him the right of collecting interest in case of delayed payments.)

ART. 5. If the contractor should fail to carry out any of the provisions of Articles 10, 12, 13, 15, 16, 18, and 22 of the list of general conditions, or if he proceeds with evident bad faith in the execution of

the works, the Direction of Local Administration, in accord with the General Inspection, may impose fines of from —— to —— crowns (escudos), the amount of which shall be deducted from the first certificate which shall thereafter be granted, it being understood that all claims by reason of these rulings are renounced in advance, as well as ordinary local rights or appeal to special privilege. Date and signature.

NOTES.

First. If property belonging to public works are to be sold, the administrative conditions shall be reduced to the designation of the time in which the selling price shall be paid, and a statement that if the contractor should fail to carry out his agreement he shall lose the provisional deposit, and also that the expenses of the bidding shall be for his account.

Second. If because of the slight importance of technical conditions arranged according to the formulæ, there should be added to the administrative conditions an article fixing the times in which payment shall begin and end, and another statement which shall provide that the execution shall be according to the directions of the expert agent or the commission charged with the supervision.

Third. In no case shall there be established the obligation to pay advances to the contractor, not even when guaranty is given for this purpose, nor shall distinct guaranties from those provided in Article 3 be declared admissible.

Madrid, March 27, 1869.

L. DE AYALA.

FORMS.

NUMBER 1.

ADVERTISEMENT.

By virtue of the direction of (*here the name of the proper Authority and the date of the order for the bidding*), the —— day of ——— at —— o'clock has been determined on for the award by public bidding (*here the work or service which is to be contracted for or the property which shall be sold*), the value of which, according to an estimate (or appraisal in case of sale) approved on —— of ———, amounts to —— crowns and —— milesimas. The public bidding shall be carried on in accordance with the Instructions in force March 27, 1869, at (*here the point or place where it is to be carried on*), and there must be shown in (*such place*) all the documents which shall bear on the contract, for the information of the public. The proposals shall be exactly according to the annexed form, and shall be presented in sealed documents and admitted only during the first half hour of the proceedings. The proposals shall contain the document that there has been deposited, as a provisional guaranty in order to participate in the public bidding, the sum of —— crowns in coin, or its equivalent in the consolidated debt of the

State, at the rate of ———, deposited for that purpose in the General Treasury (if Municipal works are in question there shall be added "or in the Depository of the locality"). Propositions shall be of no effect which fail to comply with any of these requisites and those which are greater in amount than that of the estimate (or if sales are in question there shall be stated "or may be less than the appraisal"). On beginning the proceedings of the public sale the said Instructions shall be read; in case that there is an oral bidding because of equality, the lowest bid admissible shall be —— crowns. *Date and signature of the Authority who may preside at the public sale.*

NUMBER 2.

FORM OF PROPOSAL.

Mr. ———, resident of ———, having knowledge of the advertisement published by (*here the name of the proper Authority*) on (*such a date*), of the Instructions of the public bidding of ——— of the requisites demanded for the award in public sale of (*here the work or service which is to be contracted for or the property to be sold*) and of all the obligations and rights stated in the documents which shall form part of the contract, agrees to take in his charge this work (*or service or property*) for the sum of (*here the value written out*). *Date and signature.* The envelope of the proposal shall have this heading: Proposal for the award of (*such service, work, or property*).

NUMBER 3.

MEMORANDUM OF PUBLIC BIDDING.

At (*such a place*) on (*such a date*) convened in (*such a building*) the gentlemen who compose the Board of Public Bidding for the service of Public Works for the purpose of awarding (*here the works, services, or property*) advertised on (*such a date*), the proceedings were begun at the given hour, and thereafter all the formalities provided for by the Instructions in force in ——— were complied with. After the first half hour,[1] and after opening (*so many*) bids presented, the bidding was continued in numerical order. The first contained a proposal subscribed by Mr. ———, at the rate of —— crowns; the second, another by Mr. ———, at the rate of ——, etc. All the (*or such*) proposals were found admissible, being in conformity with the form and accompanied by the proper documents of provisional guaranty, and bid number ——, subscribed by Mr. ———, at the rate of —— crowns was declared the most advantageous.[2] The certificates of deposit of the rest were returned to the

[1] If there should not be any bidders, it will end thus: "And no bid whatever having been presented, the proposed public sale was considered ended and the present memorandum was drawn, signed by all the members of the Board. Date and signatures." If explanations shall have been demanded, this shall also appear.

[2] In case of oral bidding, because of the equality of the written proposals, the last offers of each one of the bidders shall appear.

respective bidders, adding the former to the proceedings, together with all the proposals and their envelopes; and the present memorandum was made and signed by all the members of the Board. *Date and signatures.*

REMARKS CONCERNING INSTRUMENTS CONSTITUTING CONTRACTS.

The instruments constituting contracts granted in consequence of the award of any service or of property of Public Works, shall be made with the heading, the beginning and the ending, and with the formalities prescribed by existing legislation. The body of the document shall be composed of a copy of the order of award, a copy of the receipt or document which shows that the proper guaranty has been given, and a clause which provides that "the contractor obliges himself to the exact fulfillment of the contract, according to the provisions of the general conditions of December 25, 1867, of the technical conditions approved on ———, and of the administrative conditions approved on ———, and has written his assent on these last two documents, and on the estimate and plans." In order to draft the instrument, the Clerk shall examine the record of proceedings after the indicated requisites have been fulfilled. When, because of the small importance of the service, no plans or articles of technical conditions have been made, reference to these documents shall be omitted from the preceding clause.

ARTICLES OF GENERAL CONDITIONS

FOR THE

CONTRACTING OF PUBLIC WORKS IN PUERTO RICO.

BUREAU OF PUBLIC WORKS, CIVIL CONSTRUCTIONS, FORESTS, AND MINES.

ARTICLES OF CONDITIONS AND FORMULÆ FOR PUBLIC WORKS.

His Excellency the Colonial Secretary communicates to this General Government, under date of the 27th ultimo, the following order, number 255:

YOUR EXCELLENCY: The application to the projects and construction of the works which may be therein executed of the new articles of general conditions for the contracting of the same, approved by Royal Decree of the Secretary of the Interior of June 11, 1886, and of the formulæ for the drafting of projects of highroads in the part applicable, approved by Royal Orders of June 26 and of August 24 of the same year, in force in the Peninsula, the application of which is proposed to public works of the Philippines by the Consulting Board of Roads, Canals, and Ports, being convenient and beneficial for the better service of public work in this Island; in conformity with said proposal, the King (whom God preserve), and in his name the Queen Regent of the Realm, has been pleased to order that the articles of general conditions for the contracting of said works and the formulæ for the drafting of projects of highroads, approved by the Royal Orders above cited, be extended to this Island and to public works of all kinds which may be projected or constructed in the future; for which purpose there are sent to Your Excellency the annexed eight copies of said documents, destined for the Offices of Public Works of that Province.

And its execution being resolved upon by His Excellency the Governor-General, under date of the 23d instant, his superior order is published in this official newspaper for general information, as well as the articles of conditions mentioned. The Municipal Councils and individuals who may need the formulæ may acquire them in the manner which may be deemed most convenient, since in the future projects of all kinds which are drawn in the Island must be in accordance with the same.

Puerto Rico, May 29, 1888.

ANGEL VASCONI,
Secretary pro tempore of the General Government.

The document referred to is as follows:

DEPARTMENT OF PUBLIC WORKS.

MADAM: The administrative system which generally controls in the execution of public works in our country is that by contract; on very rare occasions the Government has directly carried them out by means of its agents.

But the contract should follow, and in fact has followed, very different principles. It is most natural, without doubt, to adjust a fixed sum

for the work, stipulated beforehand, without taking into account for the payment either the actual construction or the means employed in the construction. This system, ordinarily designated by the name of the system of determined amounts, is extremely simple and expeditious for the Administration; it is very generally used in England; it is nearly imperative in the United States, where the engineers of the contractor draw the project of the work which is to be executed, and there are many supporters of it in Spain. Probably it will be the one adopted in the future more or less remote.

This system demands, as a first and inevitable condition, that the work which is the object of the contract shall be perfectly and completely defined in its situation, form and dimensions, composition and class of materials; and further, that all modifications in the project may be excluded, whatever may be the causes which might suggest them or the advantages which might be obtained thereby. When the works have been begun, all change from what has been agreed on constitutes in fact a novation of the contract, which in most instances necessitates the rescission of the one already entered into, disturbing the construction of the works, and giving the contractor the right to ask for payment of the damages occasioned.

It is just the nonobservance of these two conditions, inherent in this system of determined amounts, which discredited it and caused its abandonment in the trial which was made of it in our country in the first half of the present century. At that time contracts were made concerning the construction of highroads, paying a fixed sum for every linear unit constructed, but without defining, either in the plans or in the rest of the documents of the contract, the work which the contractor obligated himself to carry out. It is easily understood that in rough ground a slight deviation of the line of the center of the highroad might under such conditions ruin or enrich the contractor of the works.

A reaction was natural, and being exaggerated the system was adopted which is to-day in force, but complicating it with minute details, which are the origin of numerous and frequent claims.

This system follows step by step the operation of the construction of the work, paying each one of them separately at prices previously agreed on and to the amount in which each has been executed. Thus the bed of a highroad is paid separately from the quarrying of the stone, its transportation, varying with the distance of the work, its breaking, its spreading or placing on the bed of the road, and lastly, its consolidation and the other work which is necessary to put the roadbed in condition for travel. The excavations which are necessary to form the leveling are paid at special prices, according to the different nature of the land excavated, and in the embankments the same circumstances were kept in mind and the transportation of the earth with which they are formed.

There is nothing apparently more equitable than these prices in order to serve as the basis of contract. The contractor is paid for the work which he actually executes and in the very condition in which it is carried out; and, nevertheless, nothing is more complicated, embarrassing or difficult of application in practice. For the very reason that it is necessary to follow all the operations of the construction, fixing their price and value one by one, claims are indefinitely multiplied, and the different manners in which the debated question is understood by the contractor and the agents of the Administration, not always in accord among themselves, gave rise to endless suits, and were frequently the cause of contradictory orders of the Government concerning the point in dispute.

It was believed that the harm could be corrected, explaining certain doubtful questions for application to future contracts and abandoning in part the procedure of detailing and paying separately for all the operations of the execution of the work. In this manner the actual system was arrived at defined in the Articles of general conditions of July 10, 1861, and in the formulæ for the drafting of projects of highroads, approved by the Royal Order of February 12, 1878. In it the classification of lands, before without limit, has been reduced to five groups, the price of the embankments has been declared to be unalterable, and except in case of the transportation of stone and brick, which is paid in accordance with the distance of the points from which it may be brought, works of all kinds executed by the contractor have to-day an invariable price. The trouble has, in fact, been ameliorated, but it has been impossible to cause it to disappear.

With this object the subscribing Secretary proposed to modify the existing system of contracts, not replacing it by the system of determined amounts, radically distinct, which might demand a sudden change in the business of the Administration, an origin of difficulties and embarrassments in the development of public works which prudence advises one to avoid; but preserving the principle which is actually in force, of paying the contractor for what he really constructs, as appears from the measurement, but previously assigning to each kind of work an invariable price, whatever may be the character of the lands and the distance from which the materials are brought or to which they may be carried, and leaving the contractor at liberty to acquire them wherever might be most advantageous, and of organizing the works in accordance with his own interests and not in accordance with the proposals of the Administration. In a word, instead of adjusting to a determined amount the total value of the work, a fixed and invariable price is established for each one of the different kinds which may compose it, and those which actually have been constructed by the contractor are paid in accordance with these prices. By this course whatever depends on individual opinion is eliminated from the contract, uprooting the greatest number of claims and the most doubtful claims, at the same time

simplifying the inspection of the Government and making it more effective, since it is limited to the examination as to whether the work contracted for is constructed in strict accordance with the stipulated conditions, and to the measurement thereof after its completion. In short, the system, preserving the advantageous principles of the system of determined amounts, is much more flexible than the latter, and may reach the same objects without disturbing the business of an important part of the Administration.

At all events the subscribing Secretary must make it appear that the form which he proposes is not an untried method in Spain for the contracting for public works. It is the ordinary method practiced by Companies and by the Government itself in those works which, because of the use to which they are devoted, receive the name of "civil constructions;" and in reality the reform is nothing more than the rigorous application in every particular of the principle which has served to draft the actual formulæ of the projects of highroads. It is exactly for this reason that the new articles of general conditions of the present decree may also serve for contracts made under the system now in force, only adding in the articles of technical conditions an article referring to the classification of the lands and another to the payment of the transportation.

But the greatest modification which the new system of contracts introduces into the construction of the works is that of going over the plan on the ground before the public biddings. Up to the present time, when the project of the work was once approved, the Government announced the award at public sale, and before the contract was executed the plans were gone over on the ground and the condemnation of the lands was made. It was then that the advantages and the errors of the project appeared, and with them the delays and difficulties in the progress of the works, the claims of the contractor, and the necessity of making additional appropriations which extended the time of termination and which increased the calculated cost of the work. With such a system it is impossible to have a good Administration, because the Government should know beforehand, with sufficient approximation and within reasonable limits, the amount of the works which it undertakes, all these considerations being of such gravity that they are sufficient to impose the going over of the plans on the ground previously, even in contracts which are executed under the system now in force.

In the one proposed in the present decree the defects and errors of the project can not have such important consequences. There is no obligation contracted by the Administration, and the latter is at complete liberty to correct or perfect the project at the time and in the manner which it deems most convenient, advertising and contracting for the execution of the work after it has been fixed and when the ground has been determined on and its value estimated as approximately as possible.

Another reform, although less important than that of previously going over the plan on the ground, must also be specially mentioned. The cases of force majeure, as they are defined in the articles of conditions of 1861 and in the Regulations of June 17, 1868, are the source of continual claims and of interminable proceedings, which impede the business of the Administration and prevent the progress of the works, and which can not be resolved by general rule with the assurance of absolute certainty. It is necessary to determine with exactness the magnitude and importance of a passing event which does not leave behind it other visible marks than the damages which it occasions, and which must be described many months after it has occurred, and by means of the declaration of witnesses, who, while they may be competent because they know the facts, are not ordinarily so, in order to appreciate the details; and it is just in such cases in the majority of instances that the declaration of force majeure is founded. It is well known, on the other hand, how weakly public interests are defended in investigations of this kind when opposed to private interests, and experience of this kind proves it, it being very rare that the proceedings of such investigation do not result in declaring the propriety of the claims of the contractor.

The complication of the system and the irregularity in the decision disappear if the declaration of force majeure is made to depend, not so much on the magnitude or the fact of the occurrence as on its nature. In this manner the number of the proceedings is considerably reduced, and the necessity for investigation is avoided, because cases of public notoriety are in question; and if any circumstances should demand it, the investigation shall be concerning the occurrence of the accident and its extent or reality. Of course, in this manner the contractor may be charged with damages which were actually suffered by the Administration; but this is the hazardous part of the contract, and those who go to the bidding shall be careful to ascertain if, given the conditions in which the work is to be executed, the prices of its various parts and that part of the expenses which may be unforeseen in the estimate are sufficient to cover that possibility.

In this manner an important novelty is proposed, which the subscribing Secretary has already had the satisfaction of introducing in the articles of particular conditions which were made in the public bidding for the construction of the building for the School of Mines; it is the insurance of the lives of the workmen, at the expense of the contractor, who may have to labor on the work thus publicly sold.

This novelty, already known and used by some of the more advanced nations of the world, is demanded by transcendental conditions of a social character, now more than ever worthy of being attended to by every thoughtful Government; and it is also imposed by the duties incumbent on the Administration of granting to the less educated classes reasonable protection, which, without injuring the rights of

others, protects them, cooperating with the efficacy of the law, which also individually protects them.

Lastly, a few other slight alterations have been introduced, contained in orders not in force, suggested both for the purpose of clearing up doubtful questions and for establishing rules and precepts, the necessity of which has been demonstrated by practice.

Aside from all these changes, the order of the articles of 1861 has been preserved, as also as many provisions thereof as are compatible with the new system, so as not to change, except in that which is absolutely indispensable, a document which has already been in force for twenty-five years in the contracting for public works, and which is no more than the amplification of what was approved in the year 1846.

Based on the foregoing considerations, and in accordance in all essential points with the report of the Consulting Board of Roads, Canals, and Ports, the undersigned Secretary has the honor of submitting, for the approval of Your Majesty, the following plan of articles of general conditions for the contracting for public works.

Madrid, June 11, 1866.

Madam: At the Royal Feet of Your Majesty.

EUGENIO MONTERO RIOS.

ROYAL DECREE.

On the proposal of the Secretary of Public Works, in accord with the Council of Ministers, in the name of my August Son, the King Don Alfonso XIII, and as Queen Regent of the Realm,

I hereby decree the following:

ARTICLE 1. The following articles of general conditions for the contracting for public works are hereby approved.

ART. 2. Their provisions shall begin to be observed in the contracts which from the date of this decree may be entered into by the Administration.

ART. 3. The articles of general conditions for the contracting for public works of June 10, 1861, and all other conditions which are in conflict with the articles which are approved by this decree for new contracts, are hereby repealed.

Given at the Palace on the 11th of June, 1886.

MARIA CRISTINA.

EUGENIO MONTERO RIOS,

Secretary of Public Works.

ARTICLES OF GENERAL CONDITIONS FOR THE CONTRACTING FOR PUBLIC WORKS.

CHAPTER I.

General Provisions.

ARTICLE 1. Contractors of public works may be Spaniards or foreigners who are possessed of civil rights, in accordance with the laws of their respective nationality, and partnerships and companies legally constituted or recognized in Spain. There are excepted—

First. Those who have been criminally prosecuted, if any of them shall have been condemned to prison;

Second. Those who have failed in business, either by suspending payments or having their property attached; and

Third. Those who are shown to be debtors to the public funds in the capacity of taxpayers.

ART. 2. The person to whom the execution of a work or service for the same has been awarded shall deposit as a guaranty the amount prescribed by the articles of particular conditions which may have served as the basis for the award. This deposit shall be made in the place and within the time designated by the said articles of condition.

ART. 3. The time fixed in the previous article shall not exceed thirty days, and within it there shall be presented by the person to whom the contract is awarded the receipt which shows that he has effected the guaranty referred to in the same article. In case of failure to do so, there shall, without any further proceedings, be a declaration of the invalidity of the award, and the person to whom the award was made shall forfeit the provisional deposit which may have been made in order to take part in the public bids.

ART. 4. Every contract for the execution of public works shall be made by a public instrument, which shall contain the beginning and the ending and the forms prescribed by existing legislation.

The body of the said instrument shall consist of: So much of the memorandum of bidding as refers to the proposal at the public sale, or rather the one which is declared the most advantageous; the order of award; an exact copy of the receipt referred to in the preceding article, and the addition of a clause or condition stating in absolute terms that the contractor obligates himself for the exact fulfillment of the con-

tract, in conformity with the provisions of these articles of general conditions, of the particular conditions, of the technical conditions of the project, and of the plans and estimate. Previously to the execution of the instrument the contractor shall have signed, at the foot of said articles of particular and technical conditions and of the plans and of the estimate, his agreement thereto.

ART. 5. The contractor has the right to obtain copies, at his own cost, of the plans, estimate, and articles of conditions of the project. The engineers, if the contractor so requests, shall certify these copies after they have been compared.

ART. 6. Contractors are obligated to submit the decision of all questions arising with the Administration which might affect their contracts, to the Administrative Authorities and Tribunals, in accordance with the Law of Public Works, renouncing the rights of common law, and to the privileges of domicile.

ART. 7. These articles of conditions shall control in all matters which are not modified by the particular conditions of each contract.

CHAPTER II.

EXECUTION OF THE WORK.

ART. 8. The Engineer, or the person charged with the inspection and supervision of the works, shall go over on the ground, in the presence of the contractor, the line and survey of the same made before the public bidding or award, drawing a duplicate memorandum, which shall be signed by the Engineer and the contractor, showing that the survey is made in accordance with the approved project. This shall be accompanied with the plans and longitudinal and transverse profiles which may be judged necessary, in accordance with the character and circumstances of the land and of the work, also signed by the Engineer and by the contractor. One of these copies of the memorandum shall be annexed to the contract records and the other shall be delivered to the contractor, sending a copy thereof to the General Direction.

In case differences arise between the project and the comparison with the survey, the memorandum shall set them forth, and they shall also be noted on the plans and the proper profiles, all proceedings being suspended until the decision by the superior Authority, to whose knowledge the matter shall immediately be brought.

The expenses of the comparison of the general survey, as well as the making of partial comparisons on the ground demanded in the course of the work, shall be at the expense of the contractor.

ART. 9. The acquisition of lands occupied by the work is at the expense of the State, but the contractor shall be obligated to pay its value, for which he shall be reimbursed by means of certificates issued by the Chief Engineer of the province, with a credit of 1 per cent by reason of the advance of the money.

ART. 10. The contractor shall begin the work within the time set forth in the particular conditions of the contract; he shall so carry them on, that within the various times set forth therein the corresponding part shall be executed, and shall finish them within the time fixed. In the execution, so far as the results of the plans and profiles of the project or of the survey which shall have been officially authorized are concerned, the provisions of the technical conditions and of the orders or instructions given by the Engineer, or by the subordinates directly charged with the inspection, shall be followed. The contractor may demand that these instructions or orders shall always be given; and this shall always be necessary when the technical conditions or the indications of the plans are attempted to be explained, interpreted, or modified. The contractor shall have in all cases right to complain of the directions given by subordinates to the Engineer, and of those given by the latter to the Engineer in Chief, who shall decide according to their judgment of what may be, deemed just and proper.

ART. 11. If in any case whatsoever, independently of the will of the contractor, the latter can not commence the works within the time fixed, or shall have to suspend them, an extension shall be granted for a time sufficient for the fulfillment of the contract.

ART. 12. From the time the works are begun until their final acceptance, the contractor or his duly authorized representative shall reside at a place near the works, and he can not absent himself therefrom without notifying the Engineer and leaving a substitute to give orders, make payments, continue the works, and receive the orders which may be communicated to him. When this provision is violated, all the notices which are made in the office of the Alcalde of the town of his official residence, shall be considered valid.

ART. 13. The contractor, personally or by means of his agents, shall accompany the Engineers in the visits which the latter make to the works, whenever they may so demand. He shall see to it, in the same manner, that the proprietors or cultivators of the neighboring lands do not infringe with their labors on the zone devoted to the execution of the works, and that they do not deposit therein material of any kind, immediately notifying the Engineer of any infraction of these rules which may be observed.

ART. 14. The contractor can not refuse to admit the Engineers, Assistants, or Overseers in charge of the inspection of the work, nor demand that, on the part of the Administration, other experts be assigned for the inspection and measurements. If he believes himself to be prejudiced by the results of these inspections and measurements, he shall proceed as indicated in Article 10, giving the reasons of his complaint and the grounds therefor to the Chief Engineer, who shall either himself decide, or report to the Government; but in neither case shall the progress of the works be interrupted or disturbed for this reason.

ART. 15. The number of laborers for the auxiliary measures necessary for the execution of the works shall always be in proportion to the extent and nature of those which have to be executed; and in order that the Engineers may be sure of the fulfillment of this condition, the contractor shall always give an account thereof when it is demanded.

ART. 16. The contractor shall insure the lives of the laborers against all the accidents which may result from the work or be connected therewith. Those of the General Direction shall except those which may be declared to be imputable to the injured laborer by reason of his ignorance, negligence, or temerity.

The contractor shall make the insurance referred to in the preceding condition in the manner in which he may deem it convenient and under his responsibility, on the basis that, in case of the permanent injury of the laborer or of his death, the latter or his family shall receive an amount equal to the pay for five hundred working days.

The provisions of this condition govern in case that the laborer or his family renounces any other action for the payment of damages or injuries which they may have against the contractor.

ART. 17. For the lack of respect and obedience to the Engineers and subordinates in charge of the inspection of the works, or for conduct which compromises or disturbs the progress of the work, the contractor shall be obliged to dismiss his employees and laborers when the Engineer so demands, without prejudice to complaining to the Chief Engineer, in case no justifiable reason for the order is believed to exist.

ART. 18. The contractor shall be obliged to indemnify property owners for all damage which may be caused by the execution of the works, whether by the quarrying, by the removal of the ground for the building of embankments, or the occupation of the land for the formation of supports, and in order to accommodate shops and materials; by the working of roads for their transportation, and by the other operations which may be required in the course of the execution of the work.

The contractor shall fulfill the requisites prescribed by the provisions in force concerning this matter, unless an amicable arrangement is reached with the property owners concerning the appraisal and payment of the damages which may have been caused, in which case there shall be exhibited, whenever required, the agreement which may have been entered into between them.

ART. 19. The contractors may take and use the materials found in State lands or on the commons of the towns, without paying indemnity of any kind, but subject to the police regulations which may be established for this purpose by those in charge of the administration and surveillance of said lands, who must be given previous notice, always respecting and replacing existing servitudes, as well as adopting the proper measures in order not to disturb the free and safe use of said lands.

ART. 20. The contractor shall not, under any pretext whatsoever, construct any work other than in strict accordance with the project which may have served as the basis for the contract; otherwise he shall have no right to payment for the works executed in violation of this article, unless he proves, by presenting the written order of the Engineer, that the latter has allowed him to carry them out; in which case he shall be paid in accordance with the prices of the contract.

ART. 21. The contractor shall have permission to take material of all kinds from the places that he may deem convenient, always providing that they fulfill the conditions of the contract, are perfectly suitable for the object to which they are applied, and are employed in the works in conformity with the rules of construction.

ART. 22. Materials shall not be employed until they have been examined and accepted, in the manner and form prescribed by the Engineer.

ART. 23. When the excavations produce material which is not utilized by the contractor in the works of his contract and which can be utilized in any other work of the State, the contractor shall be obliged to pile them up at places near the place of extraction and in the manner prescribed by the Engineer, the expenses of the piling up being paid for.

ART. 24. When the materials are not of good quality, or are not well prepared, the Engineer shall order the contractor to replace them at his own cost with others conforming to the conditions. If he refuse to do so the Engineer shall make a statement of the defects which they may have and shall send it to the contractor, who, in his turn, shall state the reasons existing for his refusal to agree with the orders of the Engineer, and the whole matter shall be brought to the attention of the immediate superior for the determination which may be deemed just.

If the circumstances or the condition of the work shall not permit awaiting this decision the Engineer shall have the right to impose on the contractor the employment of the material which he shall deem best, in order to avoid the damages which might result from the stoppage of the work, the contractor having the right to indemnity for the damages which may have been caused him in case the superior Authority shall not approve the decision made by the Engineer.

ART. 25. Until the final acceptance shall take place the contractor is alone responsible for the execution of the works which may have been contracted for and for the defects in the same which may be noted; but he shall not be excused or have any right whatever from the fact that the Engineer or his subordinate shall have examined and gone over the work in the course of its construction. As a result, and when the Engineers notice errors or defects in the constructions, whether in the course of the execution or whether after their conclusion and before their final acceptance, they may order that the defective parts be demol-

ished and reconstructed by the contractor at his own cost. If the contractor should not deem this decision just, or should refuse to demolish and reconstruct as ordered, proceedings similar to those set forth in the preceding article shall be observed.

ART. 26. If the Engineer should find good reasons to believe the existence of hidden errors of construction in the executed works, he may order, at any time before the final acceptance, the demolition of such as may be necessary to ascertain those which are supposedly defective. The expenses of demolition and reconstruction which may be occasioned shall be paid by the contractor, provided that the errors really existed; otherwise they shall be paid by the Administration.

ART. 27. There shall be at the cost and risk of the contractor the scaffolds, frames, apparatus, and other auxiliary means of construction, observing, nevertheless, the precautions which the Engineer may deem convenient to establish for the greater safety of the laborers.

All the auxiliary means shall remain the property of the contrator on the conclusion of the works, providing the contrary is not agreed on in the particular conditions, no claim whatsoever being founded on the inefficiency of such means, or when they shall be specified in the estimate, or when they shall have been separately stated in the estimate, or estimated all together.

ART. 28. No inscription whatever may be placed on the works without the authority of the Government.

ART. 29. The Government reserves the ownership of antiquities, objects of art, and mineral substances which may be utilized for public instruction which may be found in the excavations or demolitions. The contractor shall be obliged to employ, in order to extract them, all the precautions suggested to him by the Engineer, with the right, however, to indemnity for the expense which this work may occasion him.

If in the course of the construction of the work, or in consequence thereof, there should appear on the surface running water or currents of water, they shall also be the property of the Government; but the contractor may have the right to use them in the course of construction and for consumption by the laborers during the period of his contract.

CHAPTER III.

ECONOMIC CONDITIONS.

ART. 30. The contractor shall be paid for the work actually executed in accordance with the approved project or the modifications introduced therein, or the orders which may have been communicated to him in writing, providing that the technical conditions are always carried out, in accordance with which the measurement and valuation of the various units shall be made. Consequently the amount of each kind of work provided for in the estimate shall not serve as the basis for the establishment of any kind of claim, except as expressed in Article 49.

ART. 31. When the contractor shall voluntarily employ, with the authorization of the Engineer, materials of greater dimensions than those set forth by the particular conditions, he shall only have a right to payment for the work which results from the cubic measurement made in accordance with the project, applying the prices of the contract. If the dimensions should be less, and nevertheless declared admissible, the payment shall be made according to the results of the cubic measurement.

The payment shall be made by reason of the augmentation of dimensions of materials, whenever the Engineer may have in writing so ordered the contractor to use them.

ART. 32. The amounts calculated for accessory work, although appearing in a single amount in the general estimate, shall not be paid except at the prices and under the conditions of the contract, in accordance with the particular projects which may have been drawn therefor, or in default of such, in accordance with the results of the final measurement.

In the same manner the extraction of rubbish and fragments which might result during the period of guarantee shall be paid for.

ART. 33. There shall be paid absolutely, but with the reduction made on the bidding, the determined amounts set forth in the estimate for auxiliary means of the execution and for the drainage, as well as for the indemnity for loss and damage occasioned by transit, use of provisional rates, alteration of drains and similar works which do not form an integral part of the contract.

In the same way, the determined amounts for the preservation of the earthworks and constructions, and the work done by manual labor necessary for the preservation of the bed of the highroads, shall be paid for, whenever the time during which the preservation is charged to the contractor shall be fixed in the conditions. Whenever it is reduced, a proportionate deduction shall be made, and whenever it is augmented without fault of the contractor, there shall be paid, besides, a proportionate part for the excessive time.

In cases in which all or part of the preceding amounts do not appear in the estimate, it shall be understood that the expenses occasioned by those operations shall be included in the prices of the units of work provided by the estimate.

ART. 34. The payments shall be made at the times fixed by the particular conditions of the contract, by means of warrants issued by virtue of the certificates of work given by the Engineer. The warrants or their amounts shall be necessarily delivered to the contractor in whose favor the award of the bid of the works has been made or to a person legally authorized by him, and never to any other person, although warrants or letters requisitorial be issued by any Authority or Court for their retention, since public funds devoted to the payment of laborers or for their security are in question, and not obligations of

private interest to the contractor. Only the balance which may remain after the final acceptance of the work in accordance with the conditions and the guaranty, if it should not necessarily have to be retained for the fulfillment of the contract, shall be subject to the attachment decree by said Authorities or Courts.

ART. 35. Certificates of work shall be given at the times fixed in the articles of economic conditions of the contract, having the character of provisional documents of account, subject to the corrections and modifications which may result from the final liquidation.

In order to make these certificates the elemental prices which have served as the basis of calculating the average price of each unit of work shall be applied, bearing in mind the reduction which may have been the result of the public bidding, the Engineer having the power, on granting the certificates, to deduct as much as 20 per cent of the amount of the valuation thus made whenever special and justifiable circumstances, which must be set forth, advise the making of this reduction.

ART. 36. The certificates shall include three-quarters of the value of the materials when shall have been actually used in the work, according to their valuation made by the Engineer, keeping in mind this payment in order to deduct it from the total amount of the works constructed with such materials.

ART. 37. Whenever drainage may be necessary which, because of the circumstances, is not at the expense of the contractor, the latter shall be obliged to pay the expenses of all kinds which may be occasioned, which shall be repaid to him by the Administration apart from the contract. For this purpose payment shall be made in the presence of a person designated by the Engineer, who shall draw the lists, which, attached to the receipts, shall serve as vouchers for the accounts, which shall be stamped with the approval of the Engineer.

Besides the monthly repayment of these expenses to the contractor, he shall be paid 1 per cent of their amount as interest on the money which he has advanced and remuneration for the work and labor which he may have had to perform.

ART. 38. If the Government should not make payment for the executed work within the two months following that in which the certificates were given by the Engineer, the contractor shall be paid, from the day on which said period of two months terminated, interest at the rate of 6 per cent annually on the amount of said certificates.

If two additional months have passed without the payment having been made, the contractor shall have a right to the rescission of the contract, the effects thereof being those stated in Article 54, and the corresponding liquidation of the executed works and materials used shall follow. The petition for the rescission of the contract based on this delay in payments shall not be acted on unless the contractor proves that at the time of his statement he has invested in the works

and in the materials furnished the part of the estimate corresponding to the time of execution which may have been fixed by the contract, and shall prove that at the proper time he has taken the necessary steps to collect the amount of the warrants issued in his favor without having succeeded in doing so.

ART. 39. In no case may the contractor alleging delay in payments suspend the works nor reduce them to a lower scale than that which proportionately is proper according to the time at which they are to be finished. When this happens, the Administration may carry out the provisions of Articles 55 and 56.

ART. 40. The contractor shall have no right to indemnity by reason of losses, damage, or injuries occasioned to the works, except in cases of force majeure. For the purposes of this article, the following only shall be considered as such:

First. Destruction by fire caused by electricity in the atmosphere.

Second. Damages produced by earthquakes.

Third. Those resulting from the movements of the land on which the works are constructed; and,

Fourth. Destruction occasioned by violence with armed hand, in times of war, public sedition, or robbery by mobs.

In order to claim and obtain in a proper case the payment of the damages, the contractor shall follow the provisions of Articles 2, 3, 4 and 5 of the Regulations of June 17, 1868.

ART. 41. The contractor may not, under any pretext or error or omission, claim an increase in the prices fixed by the general terms accompanying the estimate.

Neither shall any claim whatsoever be admitted which is founded on statements made in the memorial concerning the works, their prices, and the other details of the project, alleging that such document is not the one which serves as the basis for the contract. The material errors which the estimate may contain, either by reason of variation in prices differing from those of the list, or from error in the amounts of the work or its value, shall be corrected at any time they may be observed, but shall not be taken into account for the purposes indicated by Article 49 except when a claim may have been established thereon within the period of four months, counting from the day of the award.

The material errors shall not change the proportional reduction made in the contract in connection with the amount which in the estimate has served as the basis for the same, but it shall always be fixed according to the relation between the amounts of said estimate (before the corrections) and the amount offered.

ART. 42. In no case may the contractor allege uses and customs of the country concerning the application of prices or measurement of the works, when in conflict to the present articles of conditions or to the particular ones of the contract.

CHAPTER IV.

MODIFICATIONS OF THE PROJECT.

ART. 43. If, before the granting of the works or during their construction, the Administration should resolve to execute on its own account part of those included in the contract, or should decide to introduce into the project modifications which produce an increase or a reduction or even a suppression of amounts of work provided for in the estimate, or the substitution of one class of construction by another, provided always that they be of those included in the contract, these decisions shall be obligatory on the contractor, without the latter having any right, in case of suppression or reduction of the works, to claim any indemnity on account of the pretended benefits which he might have been able to obtain on the part of the works reduced or suppressed.

ART. 44. If, in order to carry out the modifications referred to in the preceding article, the Administration should deem it necessary to suspend the whole or a part of the works contracted for, the proper order in writing shall be sent to the contractor, and the measurement of the executed work shall be proceded with in that part which is included in the suspension, a memorandum of the result being drawn.

ART. 45. Whenever, even when not stipulated in the particular conditions of the contract, it may be deemed convenient to employ material belonging to the State, the contractor shall only be paid the amount of the transportation and of the labor in accordance with the elemental prices; and, if it should not be contained in this list, without any right to claim indemnity of any kind, unless there have already been furnished the materials contracted for. This alteration shall be considered a modification of the project for the purposes of Article 49.

ART. 46. When it is deemed necessary to employ materials or to execute works which shall not appear in the estimate of the contract, their value shall be appraised at the prices assigned to other similar works or materials, if there should be any, and if not, shall be discussed by the Engineer and the contractor, and submitted to the superior Authority if an agreement should be reached.

The new prices, agreed on in one way or another, shall be subject always to the corresponding reduction which may have been obtained on the public bidding.

When the employment of the materials or the execution of the works in question shall be proceeded with without previous approval of the superior of the prices which shall be applied to them, it shall be understood that the contractor renounces his rights and agrees with those fixed by the Administration.

When there shall be no agreement as to the fixing of these prices between the Administration and the contractor, the latter shall be relieved from the construction of the part of the work in question with-

out right to indemnity of any kind, being paid, nevertheless, for the materials which may have been used and which may have remained unemployed by reason of the change introduced.

ART. 47. When the contract includes some works which are of such nature that, calculating by a determined amount in the estimate, no definite project can be made by measurement because of the circumstances, there shall be applied to these works the provisions determined by Articles 43 and 49 concerning modifications of projects.

CHAPTER V.

CASES OF RESCISSION.

ART. 48. In case of the death of the contractor the contract shall be considered rescinded, unless the heirs offer to carry it out under the conditions stipulated in the same. The Government may accept or refuse the offer, without giving to them any right whatever to indemnification, although there shall be the right for the State to acquire, after an appraisement, the tools, utensils, and property used for the works which may be indispensable for their termination (completion).

ART. 49. When the modifications which are mentioned in Articles 43 and 45 alter the estimate of the contract in such a manner that the total amount shows a difference of a fifth, more or less, the contractor shall have the right to rescission and to payment for the materials which he may have on hand and which remain unused, according to the prices of the special list. In order to fix this difference all the alterations introduced into the estimate shall be added, though some be for excess and others for deficit.

The contractor shall have the same right when alterations arise on account of error in the material referred to in Article 41, provided that a claim has been based thereon within the time specified by said article, or when the difference arises between the detailed estimate of the works referred to in Article 47 and the agreed amount stated in the general estimate of the works.

When two or more of the reasons stated in this article appear, their results may be accumulated in order to serve as a foundation for the right of rescission.

ART. 50. When the works can not be begun because of reasons independent of the will of the contractor, or when the Government decides that the works, after being commenced, shall cease or be indefinitely suspended, the contractor shall have the right of rescission; in the proper case there shall follow the provisional acceptance of the executed works, and the final acceptance when the term of the guaranty shall have expired.

ART. 51. If the time specified for the execution of the works shall have arrived without the suspension referred to in Article 44 having

been raised, the contractor shall have the right of rescission, and there shall immediately follow the provisional acceptance of the executed works, and the final acceptance when the time of guaranty shall have expired. The same right is conceded when the suspension lasts more than one year, provided that the value of the work referred to shall be more than one-fourth of the total of the contract.

ART. 52. If, during the execution of the works, prices should rise very considerably, the contract may be rescinded on the petition of the contractor, provided that the proceedings instituted for this purpose shall prove, first, that the rise has taken place since the time when the public bids were had, not since the drafting of the project; second, that it is not owing to the execution of the works referred to in the contract, but to others which may have been subsequently undertaken, or to a general unforeseen cause; third, that it is not produced by circumstances of a temporary character, as agricultural or other similar works. A very considerable rise in prices is understood to be such as, applied to the execution of the works which remain to be executed, shall produce an amount greater than a quarter of the total amount of the contract.

ART. 53. In case that, by reason of a rise in prices, the contractor should claim rescission, the work shall not be suspended on that account.

After three months have elapsed and the Government shall not have decided concerning the claim, the contract shall be considered rescinded in fact, and there shall follow the liquidation of the works executed up to that time according to the prices of the same, without any increase or payment of any kind by way of indemnity for damages.

ART. 54. Whenever, for the reasons stated in Articles 38, 50, and 51, the contract is rescinded, the tools and utensils indispensable for the completion of the works, the employment of which shall have been previously authorized by the Engineer, and which the contractor does not care to retain, shall be taken by the Government after the price has been agreed upon, amicable or by experts, without increase of any kind under the pretext of benefits to be derived, or for any other reason whatsoever; it being understood that this payment shall only take place when the amount of the works completed up to the time of rescission does not reach two-thirds of the amount contracted for, when works of port or similar works are in question, or to four-fifths in case of highroads and works of similar character.

The materials collected and on the ground of the works, if they are actually received and are for application for the completion of the works, shall also be taken for account of the Administration at the prices fixed by the special list for this purpose; and if they should not be included in it, they shall be fixed after hearing both parties.

The materials which, collected under the same circumstances, shall be situated away from the works shall also be taken from the contractor, provided that they be transported to the works within the

period of one month, unless the Administration prefers to receive them at the place in which they happen to be.

The contractor shall also be given an indemnity, determined by the Government after hearing the Council of State, which shall never exceed 3 per cent of the value of the works which remain to be executed.

ART. 55. In the special technical conditions of each contract the development of the works shall be fixed, reasonable times being stated for the progress of the works during the course of the entire construction of the same.

These times shall be obligatory on the contractor, and if there should be reason for believing that within any one of them the corresponding development of the works can not take place, the expert Director shall give due notice in writing to the contractor, also making such rulings as shall be conducive to the punctual fulfillment of the contract.

If, in spite of this, the time fixed shall have elapsed and the contractor shall not have constructed the corresponding works, the contract shall be rescinded.

ART. 56. In the case prescribed in the previous article, and when once the rescission of the contract has been decided on, it is understood that the guaranty is forfeited, and that the contractor shall not have any claim whatsoever, nor any other right than to the payment of the works constructed and accepted.

Only when the retardation of the works shall be shown to have been produced by unavoidable causes, and when the agreement is offered to be carried out on the extension of the time which may be designated, may the Administration, if it deems it convenient, concede such extension as may appear reasonable.

ART. 57. When the rescission of a contract takes place because of one of the reasons stated in Articles 49, 52, and 53, the contractor shall have no right to claim an indemnity of any kind, nor to require the Administration to purchase the utensils and tools used for the works.

CHAPTER VI.

MEASUREMENT, ACCEPTANCE OF THE WORKS, AND FINAL LIQUIDATION.

ART. 58. The partial measurements shall be made at the times fixed in the articles of economic conditions of the contract, after citing the contractor, if the latter should desire to be present. As provisional documents, they shall be subject to the corrections which may result from the final measurement, for which purpose approval or acceptance of the works referred shall not be presumed.

ART. 59. On the completion of the works their provisional acceptance by the Engineer, whom the General Direction may designate, shall immediately take place, and with the necessary presence of the contractor or his duly authorized representative. If after being expressly

required to appear, the contractor should not be present, or should renounce this right in writing, agreeing beforehand with the result of the operation, the Chief Engineer of the province shall ask the Governor to make a new demand on the contractor; and if he should again be absent said Authority shall appoint, at the cost of the contractor, an official representative.

The result of the acceptance shall be stated in the form of a memorandum, signed by all those present, and shall be sent to the General Direction.

If the works should be found to be in good state and in accordance with the conditions, they shall be provisionally accepted and turned over to public use, the period of the guaranty beginning to run, as also that of the preservation fixed in the particular conditions, at the cost of the contractor.

ART. 60. When the works have been provisionally accepted, there shall immediately follow the general and definite measurement, with the necessary presence of the contractor or his representative, named by him or officially, as provided in the previous article.

The plans and profiles of the survey shall serve as the basis of the measurement of the plottings, which shall be drawn with the measurements taken from the work and also the form and disposition in which the superficial part of the ground shall remain, in order to deduct the number of cubic meters of cuts and embankments which the contractor has executed.

All works of construction shall be measured where they shall be visible, and in places where they are not visible the dimensions designated in the plans and profiles which shall necessarily have been made in the course of construction shall be adopted, and they shall be signed by the Engineer and by the contractor.

The volume of the foundation shall be determined by means of a shaft opened at the place designated by the Engineer.

Accessory works shall be measured in a manner similar to that employed in the measurement of the principal part of the works.

ART. 61. The valuation of the works executed by the contractor shall be made, applying to the result of the general measurement and of the cubic measurements the prices which for each unit of the work are provided for in the estimate, and further keeping in mind the provisions of Articles 30, 31, 32, and 33 of these conditions. The total amount shall be increased by such a per cent of the estimate of the contract, and the reduction made on the bidding shall be applied proportionally; from the result the amount paid on certificate shall be deducted.

The liquidation shall be drawn in accordance with the formulæ and instructions in force, and, with all the facts and copies of plans and profiles, shall be sent to the contractor with permission to retain the same for a period of thirty days, in order that he may examine them and return them with his agreement or his observations.

If because of the importance of the work, or because of the kind or number of the documents, the contractor should not deem that time sufficient for examination, he shall so state, suggesting the time that is necessary, and the Chief Engineer, if there should not be any inconvenience, shall decide whether the extension of time shall be granted or not and also its duration.

When the time or the extension has expired and the contractor shall not have made his observations, it will be presumed that he agrees with the liquidation, which in such case, as also in the case where he replies, shall be sent, with the report of the Chief Engineer, to the General Direction for the decision which may be proper.

ART. 62. During the period of guaranty the contractor shall take care of the preservation and the policing of the works, employing in them the materials in accordance with the instructions given by the Engineer. If the preservation should be neglected, and if the order of the Engineer should be disobeyed, resulting in the imperilment of transit or public use of the work, the necessary works to avoid the damage shall be carried out by the Administration at the cost of the contractor.

ART. 63. When the period of guaranty has terminated, the final acceptance of the work shall follow in accordance with the formalities specified in Article 59 for provisional acceptance, and if the works shall appear in a perfect state of preservation, receipts therefor shall be given and the contractor shall be relieved from all responsibility.

If the works should not be in good condition, this shall be made to appear in the memorandum; the Chief Engineer shall give the contractor precise and detailed instructions to remedy the defects which may have been observed, and shall fix the time within which to do so, making a new inspection of the works on the termination thereof and an acceptance of the works. If the contractor should not fulfill these orders, the contract shall be declared rescinded, with the forfeiture of the guarantee.

ART. 64. When the final acceptance has been made, the liquidation of the executed works and the labor performed during the time of the guaranty, shall be made, in accordance with the provisions of the estimate, of the particular conditions of the contract, and of the second paragraph of Article 33 of the present conditions.

ART. 65. When the final liquidation has been approved, the guaranty shall be returned to the contractor, after he shall have shown, by means of certificates of the Alcaldes of the municipal districts within which the works may have been executed, that there does not exist against him any claim whatever for loss or damages for which he may be responsible, or for debts to workmen, or for materials, and for the insurance of the laborers; and also show payment of the industrial tax corresponding to his contract.

ART. 66. If the Government shall believe it to be convenient to make partial acceptances, a contractor shall not for this reason have

the right to ask that there be returned to him a proportional part of the guaranty, although he shall be free from all responsibility in connection with the works accepted; but the guaranty shall remain intact until the completion of all the works, in order that it may be responsible for the fulfillment of the contract, as is provided for by the preceding article.

Madrid, June 11, 1886.

Approved by His Majesty.

EUGENIO MONTERO RIOS.

REGULATIONS

FOR THE

PAYMENT OF FEES TO THE TECHNICAL PERSONNEL OF PUBLIC WORKS, MINES, FORESTS, AND TELEGRAPHS

OF THE

ISLAND OF PUERTO RICO.

REGULATIONS

FOR THE

PAYMENT OF FEES TO THE TECHNICAL PERSONNEL OF PUBLIC WORKS, MINES, FORESTS, AND TELEGRAPHS OF THE ISLAND OF PUERTO RICO.

CHAPTER I.

AMOUNT OF THE FEES.

In the Service of the State.

ARTICLE 1. The technical officials in the service of the State in the branches of Public Works, Mines, Forests, and Telegraphs of the Island of Puerto Rico shall earn, as a reimbursement for the expenses which may be occasioned them by the duties of their office away from their ordinary residence, the fees which, for each class into which this service may be divided, are fixed for this purpose by the present Regulations, subject to the rules therein established.

ART. 2. For the purposes of the present Regulations the service shall be classified as:

Ordinary service.

Extraordinary service.

Service in temporary residence.

Transfers.

Ordinary service shall include:

In Public Works: Inspections of works to be kept in good order and repair.

In Mines: Inspections of State and private mines, and the inspection of the police and security of mining works of all kinds.

In Forests: Inspections of forests for the formation of plans for their use.

In Telegraphs: Visits of inspection.

Extraordinary service shall include—

In Public Works: Inspections of new works and the labors in the field for projects and preliminary projects, travels, inspections, measurements, comparisons, and survey of the projects, the taking of data as a basis for condemnation proceedings, hydrological studies, and other similar labors.

In Mines: Inspections, demarcations, and surveys and geological studies.

In Forests: Projects, inspections, and construction of new lines.

By service in temporary residence is understood that rendered by officers referred to in these Regulations in the following cases:

First. When by superior order they are engaged in drawing some project in the locality in which they may have taken the data for the same.

Second. When they have charge of the direction or supervision of isolated works distant from town and when they reside at the works.

Third. When they have charge of important constructions and their presence is necessary at the works at specified times.

By transfers shall be understood those which are made for the convenience of the service, and by superior order, from one place to another of the Island for the change of ordinary residence, which for each case is assigned to the officials by the provisions in force concerning this matter in each branch.

ART. 3. For the collection of the fees fixed by these Regulations by the officials referred to, the latter shall be considered classified in five categories.

There shall belong to the first category:

In Public Works, Mines, and Forests: The Chief Engineers of first and second classes.

There shall belong to the second category:

In Public Works, Mines, and Forests: First and second Engineers.

In Telegraphs: The Directors of the first and second classes.

There shall belong to the third category:

In Public Works, Mines, and Forests: The first and second Assistants.

In Mines: The expert Assistants of first and second classes.

In Telegraphs: The Chiefs and Officers of the stations and the Officers of the sections.

There shall belong to the fourth category:

In Public Works and Forests: The third and fourth Assistants.

In Mines: The expert Assistants of third and fourth classes.

In Telegraphs: The first and second telegraph operators.

There shall belong to the fifth category:

In Public Works: The Overseers.

In Telegraphs: The Candidates.

ART. 4. The fees in ordinary service shall consist of two parts—one quota for personal expense for each day employed away from ordinary residence and the other quota for each kilometer traveled.

In extraordinary service the payment shall be the expense of the trip going to and coming from the points in which the service is to be rendered, and in addition, a personal quota for each day employed in carrying out the duties away from the ordinary residence.

In the same manner the expenses occasioned by the service in temporary residence and in transfers shall be paid.

ART. 5. The amounts of the fees for each category and class of service shall be the following:

Categories.	Ordinary service (quota).		Extraordinary service.	Temporary residence.	Transfers.
	By day of service.	By kilometer traveled.	By day of service.	By day of service.	By day of service.
	Pesos.	*Pesos.*	*Pesos.*	*Pesos.*	*Pesos.*
First	7.50	0.25	12.50	7.50	12.50
Second	5.00	.20	10.00	5.00	10.00
Third	2.00	.10	4.00	2.00	4.00
Fourth	1.50	.10	3.00	1.50	3.00
Fifth	1.00	.05	2.00	1.00	2.00

In the extraordinary service, in the service of temporary residence, and in the transfers traveling expenses shall be paid, allowing a first-class passage to the first and second category, a second class for the third and fourth categories, and a third class for the fifth category.

In case there shall not be any existing means of transportation, the traveling expenses shall be paid according to the kilometric quota fixed for ordinary service.

ART. 6. The Government, on the proposal of the Governor-General, in accord with the Chief of the respective service, may fix special fees for those services in which extraordinary circumstances, properly proved, shall demand it.

These fees shall be fixed, keeping in mind the circumstances of the service and the category of the commissioner, and shall be collected, charged to the item in the budget corresponding to the nature of the service.

ART. 7. Special services are understood, for the purpose of the payment of the fees referred to in the preceding article, to be:

Commissions abroad. All those which are not expressly included among those actually designated in the present Regulations, and which by their exceptional circumstances can not be classified.

SERVICES OF CORPORATIONS AND INDIVIDUALS.

ART. 8. When by the Superior Authority of the Island there is ordered any report, appraisal, comparison, or investigation relative to provincial, municipal, or private services, the officials charged with these labors shall receive for those rendered away from their residence the fees fixed by Article 5 for extraordinary service.

ART. 9. In official service of Corporations and individuals there shall not be received any fee whatsoever for office work.

ART. 10. Expert officials in the service of the State who, after the proper authorization, render services or do work for provincial and municipal Corporations which do not oblige them to leave the place of their residence, may receive therefor a fixed fee, determined by the

Governor-General, on the proposal of the President of the Corporation and the report of the Chief of the respective service.

ART. 11. The members of the expert personnel of Public Works, Mines, Forests, and Telegraphs who shall pass to the exclusive service of Corporations or individuals, shall receive from either the salary and the fees established by the existing provisions, if there should be any, when there shall be no mutual agreement made therefor.

CHAPTER II.

RULES FOR THE APPLICATION OF THE AMOUNTS.

ART. 12. The kilometric fee shall not be paid if the distance from the residence to the place where the works are to be executed shall be less than 4 kilometers, for officials of the first four categories, and 6 kilometers, for those of the fifth.

The quota for personal expenses shall not be paid when the distance from the point where the works are to be executed or to the residence of the expert agents shall be less than 4 kilometers, whatever may be their category.

ART. 13. When on the same trip ordinary and extraordinary services are rendered, there shall only be collected for each day the fees for one of the classes of service, even though in the statement referred to by Article 20 both services shall be made to appear.

ART. 14. The Chief of service who by superior order is carrying out a part of this service, may choose the fee corresponding to one of the two offices, but they shall never accumulate.

ART. 15. Every individual who performs the duties of a category superior to his own shall receive for the service rendered the corresponding fee, after a declaration of the Authority with whom the Chiefs of the service are in direct communication, and of the latter for the employees of the subordinate personnel.

ART. 16. In order that temporary residence may confer the right to the corresponding fee, it is an indispensable requisite that it must have been previously declared by the Superior Authority of the Island on the proposal of the Chief of the respective service.

The drafting of a project in a locality in which the data for the same shall have been taken shall be understood to be the formation of rough drafts of plans which may serve as the basis for the correction of the data taken in the field.

The last of the three cases specified in Article 2, in order to earn the temporary residence fee, refers to that in which part of the service requires the permanency of the officer charged therewith at the place of execution, as might happen in public works, in the building of a bridge, during the construction of the foundations.

In these cases the temporary residence fees shall be received only during the period in which that part of the service referred to is being performed, with the condition of permanency above indicated.

ART. 17. The fees for transfers shall be paid, supposing that the transfer shall take place by means of the most rapid and direct transportation.

This fee shall not be paid when the transfer is made at the request of the interested party.

CHAPTER III.

GENERAL PROVISIONS.

ART. 18. All officers of the branches of Public Works, Mines, Forests, and Telegraphs shall keep a diary of operations, in which shall appear the days employed and the visits or any other works which they may execute, observations which they may have made, orders which they may have given, and whatever circumstances are worthy of being noted.

The diary of operations of all the officers shall be inspected by their immediate Chiefs, who shall state on the first page the number of folios contained in the book, and shall rubricate each one of the pages.

All officials during their visits shall note in the diaries of their subordinates the orders and instructions communicated to them, stating in default thereof their agreement with the remarks and notes contained in the diary.

ART. 19. Every officer of those included in the present Regulations is obliged to report to his immediate Chief when he leaves for visits of ordinary service, as well as when he returns.

In extraordinary service they shall also periodically make a report of the progress of the works in their charge.

ART. 20. The economic proof of the fees shall be made by means of monthly statements, in accordance with the form accompanying these Regulations.

On the back of each statement of fees shall be inserted an extract from that part of the diary of operations mentioned in Article 28, which embraces the period referred to by the statement.

ART. 21. The payment of fees for service of the State shall be made, charged to the credits designated in the chapters and articles of the budget to which the expense corresponds, and in accordance with the provisions in force concerning these matters in each branch, and also with the general conditions of Auditing.

The provincial and municipal Corporations shall pay those that are proper in accordance with the existing provisions or those that for each case may be adopted by the competent Authority.

ART. 22. The fees earned by reason of services in which two or more administrative entities are interested shall be paid, each one of the latter paying its proper part in the same relation as that in which they would contribute for the other expenses occasioned by such service.

ART. 23. In case the works referred to in Article 11 should have to be made by any private person, the latter shall first deposit, where the

Authority shall determine, an amount sufficient to cover the probable amount of the fees which have to be paid.

ART. 24. The Governor-General of the Island shall be charged with deciding the doubts which might arise from the application of these Regulations, following the spirit of the rules which are laid down and hearing the Chief of the respective service.

When a doubt has arisen, and the interested party does not agree with the decision of the Governor-General, he may appeal from it to the Colonial Secretary.

Madrid, November 19, 1879.

Approved by His Majesty.

ALBACETE.

Form of statement of fees referred to in Article 20 of these Regulations:

Island of Puerto Rico. Month of ——.
Service Receipt No. ——.
Section ——. Chapter ——. Article —— of the Budget.

Statement of fees due ——, the undersigned, for service rendered in the month indicated.

Classes and numbers.	Service rendered.	Kilometers traveled.	Days employed.	Proper fee.			Remarks.
				For the distance.	For the days employed.	Total.	
				Pesos.	*Pesos.*	*Pesos.*	

This statement shows the amount of ——. (Date and signature.)

Approved:

The Chief of the Service,

—— ——.

Examined:

The immediate Chief, The interested Party,

—— ——. —— ——.

Puerto Rico, December 20, 1879.

A true copy.

FRANCISCO FONTANALS Y MARTINEZ,
Secretary of the General Government.

TRANSLATION

OF THE

LAW OF RAILROADS

FOR THE

ISLAND OF CUBA,

AND

REGULATIONS FOR ITS EXECUTION,

WITH ADDITIONS TO DATE.

(1895.)

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT,
JULY, 1899,

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

GENERAL GOVERNMENT OF THE ISLAND OF CUBA,
Secretary's Office.

The Colonial Department, under date of September 27 last, and under No. 1678, communicates to His Excellency the Governor-General, the following Royal Order:

YOUR EXCELLENCY: In view of the necessity to clearly establish the legislation in force in that Island with regard to Railroads in order to avoid the doubts which appear in the questions submitted by the General Inspection of Public Works, and which also appear in the proceedings which take place in that Island with relation to concessions of this class of roads of communication;

Whereas, after the Budget Law of June 5, 1880, was promulgated, there were declared as preferred lines those mentioned therein, the concession of which the Government was authorized to grant, declaring the two General Laws of November 23, 1877, and their corresponding Regulations, applicable in so far as they do not conflict with the prescriptions of the said law;

Whereas the law of November 23, 1877, prescribed all the rules necessary for the concessions to construct Railroads of general interest and those of private use and tramways, and which in its article 80 establishes that the laws, decrees, and other provisions issued prior thereto which conflict with the same are repealed;

Whereas the Decree-law of November 14, 1868, on new general bases for the legislation on Public Works has been repealed in so far as it refers to Railroads, from the time the special Railroad Law was promulgated and declared applicable to the one of that Island;

Whereas for the proper application of the said Railroad Law and the Regulations for its observance it is necessary to make in its text those alterations necessary to apply the same to the administrative organization of that province, this should not be an obstacle for the immediate application of its prescriptions as ordered by the law of June 5, 1880, consulting any doubts which may arise in so doing;

His Majesty the King (whom God preserve) has deemed it proper to state to Your Excellency that the legislation in force for the concession, construction, and operation of Railroads of that Island is that which was expressly ordered to be observed by article 27 of the Budget Law of June 5, 1880, or contained in the General Laws of November 23, 1877, and their corresponding Regulations, in so far as they do not conflict with the prescriptions established by said law, said legislation having repealed all prior measures issued in conflict with the same. This I communicate to Your Excellency by Royal Order for your information and consequent effects.

And His Excellency having ordered its compliance under date of October 18, last, it is published in the *Gaceta*, for general information.

Habana, November 24, 1882.

M. DIAZ DE LA QUINTANA,
Secretary of the General Government.

(*Gaceta* of December 3.)

PUBLIC WORKS.

The General Law of Railroads, and the Law for the police of the same, of November 23, 1877, and the Regulations for its application of May 24, 1878, now in force in the Peninsula, having been extended to this Island, I have ordered their publication in the *Gaceta*, for general information.

M. DIAZ DE LA QUINTANA,
Secretary of the General Government.

Habana, January 5, 1883.

LAWS.

Don Alfonso XII, by the Grace of God, Constitutional King of Spain:

Know all ye who see and understand these presents: That in accordance with the bases approved by the Cortes which were promulgated as a law on December 29, 1876, making use of the authorization granted by the same law to my Secretary of Public Works, hearing the Secretary of the Navy in the matters of his special competence, and hearing also the full Council of State and the Consulting Board of Roads, Canals, and Ports, and in conformity with my Council of Secretaries, I have decreed and sanctioned the following law:

CHAPTER I.

CLASSIFICATION OF RAILROADS.

ARTICLE 1. This law refers to all railroads, whatever be the system of traction employed.

ART. 2. Railroads are divided into lines of general service and of private service.

ART. 3. Railroads of general service are those devoted to public operation for transportation of passengers and traffic of merchandise; those of private service are devoted to the exclusive operation of a given industry or to private use.

ART. 4. The lines constructed and those included in the law of July 2, 1870, their branch and special lines, form the general plan of railroads for the purposes of this law, all of which are mentioned here, as follows:

Northern System.—Madrid to Valladolid, Valladolid to Burgos, Burgos to Irún, San Isidro de Dueñas (Venta de Baños) to Alar del Rey, Alar del Rey to Santander, Quintanilla de las Torres to Orbó, Madrid to Valladolid by Segovia. From the line from Madrid to Valladolid to Segovia. Medina del Campo to Zamora. Medina del Campo to Salamanca, Tudela (Castejón) to Bilbao. Minas de Triano to the Ria de Bilbao.

Northeastern system and its junction with the Northern.—Madrid to Zaragoza. Zaragoza to Alsasua. Zaragoza to Barcelona. Barcelona to Granollers. Granollers to Rambla de Sta. Coloma de Farnés. Barcelona to Mataró. Mataró to Arenys de Mar. Arenys de Mar to Rambla de Sta. Coloma. Rambla de Sta. Coloma to Gerona. Gerona to Figueras. Figueras to the frontier of France. To France by the Cen-

tral Pyrenees. Tardienta to Huesca. Tarragona to Martorell. Martorell to Barcelona. Lérida to Montblanch. Montblanch to Reus. Reus to Tarragona. Barcelona to Sarriá. Selgua to Barbastro. Granollers to San Juan de las Abadesas. Mollet to Caldas de Montbuy. Manresa to Guardiola by Berga. Minas de Montsech to the French frontier by the Valley of Arán. Alcocer to Valls. Valls by Villanueva y Geltrú to Barcelona. Lérida to Puente del Rey. Zaragoza to Escatrón. Val de Zafan to Gargallo. Val de Zafan to Alcañiz, Reus, and Tarragona. Val de Zafan to Utrillas by Gargallo and Andorra. Utrillas to la Zaida. Valladolid to Calatayud. Segovia to the line from Valladolid to Calatayud. Baides to Soria and Castejón.

Eastern system and its junction with the Northeastern.—Madrid to Almansa. Almansa to Alicante. Almansa to Játiva. Albacete to Cartagena. Castillejo to Toledo. Aranjuez or Madrid to Cuenca. Alcázar de San Juan to Quintanar de la Orden. Játiva to Grao de Valencia. Valencia to Tarragona. *Cargagente to Gandia and Gandia to Denia* (animal traction). Cuenca to Henarejos. Cuenca to Valencia by Landete, and from this point to Teruel. Teruel to Gargallo by the River Alfambra and Utrillas. Teruel to Sagunto. Calatayud to Teruel and Lugo to Utrillas. Alicante to Murcia and its branches to Novelda and Torrevieja.

Southern system and its junction with the Eastern.—Madrid to Ciudad-Real (direct line). Alcazar de San Juan to Ciudad-Real. Manzanares to Córdoba. Córdoba to Sevilla. Sevilla to Jerez. Jerez to Trocadero. Puerto Real to Cadiz. Córdoba to Málaga. Córdoba to Belmez. Utrera to Morón. Utrera (junction) to Osuna. Campillos (Bobadilla) to Granada. Tharsis to Odiel River. Buitrón to the river of San Juan del Puerto. Buitrón to the line of Mérida to Sevilla. Sevilla to Huelva. Tharsis by Paimogo to the line of Beja. Mengibar to Jaén and Granada. Linares to Almeria. Murcia to Granada by Lorca. Vadollano to Linares and los Salidos. Osuna by Casariche. Jerez de la Frontera to Bonanza by Sanlucar. Cadiz to Campamento. Campamento to Málaga. Puente Genil to Linares. Zafra to Huelva.

Eastern system and its junction with the Southern and the Northern.—Ciudad-Real to Badajoz. Medellin to Miajadas. Belmez to Castillo de Almorchón. Madrid to Malpartida de Plasencia. Malpartida de Plasencia to Monfortinho. Talavera to Almorchón. Mérida to Sevilla. Mérida to Malpartida de Plasencia by Cáceres. Malpartida de Plasencia to Salamanca. Cáceres to the frontier of Portugal. Salamanca to the frontier of Portugal.

Northwestern system and its junction with the Northern.—Palencia to Ponferrada. Ponferrada to Coruña. Monforte to Orense. Orense to Vigo. Lugo to Rivadeo. Ferrol to Betanzos. Santiago to the port of Carril. Redondela to Marín by Pontevedra. León to Gijón. Sama de Langreo to Gijón. Sabero to El Burgo. Oviedo to Pravia by Trubia. Villabona to San Juan de Nieva. Zamora to Astorga by Benavente.

Balearic Islands.—Palma to Alcudia and Santa Maria or Manacor. Branches to coal mines or mining districts and importing industrial centers.

ART. 5. All the lines included in the plan adopted by the previous article, and also those which may be included in the future in said plan are lines of general service. Lines devoted to the operation of coal veins and mines of importance may also be included in those of general service, when so classified.

ART. 6. The plan of railroads can not be changed or modified except by virtue of a law.

ART. 7. All the railroad lines of general service are of public ownership, and shall be considered as works of public utility, which are entitled to the right of eminent domain.

ART. 8. The declaration that a railroad devoted to the operation of a coal vein or of mines of importance is of general service shall be made by a law. In order to obtain said declaration, a report of experts as to the importance ot the mines shall in all cases be necessary. The report shall be made by the Secretary of Public Works after hearing the Superior Consulting Board of Mines.

CHAPTER II.

CONCESSION AND AUTHORIZATION TO CONSTRUCT RAILROADS OF GENERAL SERVICE.

ART. 9. The construction of lines of general service may be undertaken by the Government, by companies, or by individuals.

ART. 10. In order that the Government may undertake the construction of a line with national funds, or with the aid of the provinces or towns, it is necessary that the line be included in the plan, and, besides, its immediate execution must be authorized by a special law.

ART. 11. When a line of general service is to be constructed by individuals or companies, the concession must always be preceded by a law fixing the conditions under which the concession is to be granted.

ART. 12. The construction of lines of general service may be aided with public funds:

1. By carrying on certain works.
2. By delivering to the companies at stated periods a part of the capital invested.
3. By allowing the use of works constructed for public use compatible with the use of the railroads.
4. By granting exemption from customs duties upon the material of construction and operation of the railroads, complying strictly with the provisions of the laws of the Budget or any others in force.

ART. 13. The provinces and towns directly interested in the construction of a line of general service shall contribute with the State to

the subsidy granted in the proportion and manner prescribed by the law referred to in Article 11.

ART. 14. The aid which is to be given the constructing companies, once determined by the Laws of Concession, the concession shall be offered at public auction, under the terms fixed, for three months, and shall be awarded to the highest bidder, with the obligation to pay to the proper party the cost of the plans of the project, which may have served as a basis for the concession; the said cost shall be fixed before making the public sale in the cases and in the form determined by the Regulations.

ART. 15. In order to be able to bid at the auctions, it must be shown that 1 per cent of the total value of the railroad, according to the approved estimate, has been deposited as a guaranty of the proposals which are submitted.

ART. 16. In no case shall the concession titles to lines of general service be issued until the holder of the concession shows that he has deposited, as a guaranty of his obligations, 5 per cent of the amount of the estimate if the concession has a subsidy, and 3 per cent if there be none.

If the holder of the concession allows fifteen days to pass without making the deposit, the award shall be declared null, with the forfeiture of the bond given, and the concession of the line shall be again offered at auction within the period of forty days.

ART. 17. The companies holding concessions of lines enjoying subsidies can not dispose of the amounts deposited as a guaranty of the construction of the railroad, until they have totally finished the works which are the objects of the concession. In case the line has no subsidy, the guaranty may be returned when it is proven that there are works finished equivalent to a third of the cost of the works included in the concession. The said completed works shall remain as a guaranty for the fulfillment of the conditions stipulated.

ART. 18. The project which may have served as a basis for the concession of a line can not be changed in any manner whatsoever by the holder of the concession, without first obtaining the proper authorization from the Secretary of Public Works, granted with the requisites prescribed by the Regulations of the present Law.

ART. 19. When, as a consequence of the changes referred to in the preceding article, the cost of the work is diminished, the direct subsidy shall be diminished in proportion to such diminution; if the changes or modifications increase the cost of the work, even when these changes perfect the same, and advantages accrue by its use, the subsidy granted by the Law of Concession shall never be increased thereby.

ART. 20. When the work is completed and the operation of the line belongs to the owner of the concession, the State shall reserve to itself the supervision thereof, through its expert agents, so that the operation of the line may be conducted according to the conditions stipulated.

ART. 21. The concessionnaire may, after proper authorization from the Secretary of Public Works, transfer his rights, and the person acquiring them shall remain obligated under the same conditions and with the same guaranties to the fulfillment of the stipulated conditions.

ART. 22. The concessions of lines of general service shall be granted, at the most, for ninety-nine years.

ART. 23. At the expiration of the period of the concession the State shall acquire the granted line with all its dependencies, and shall fully enjoy the right of operation.

ART. 24. No railroad concession shall create a monopoly in favor of companies, or individuals, and no other subsequent concessions for roads, canals, railroads, works of navigation, or others, in the same district where the railroad is situated, or in another adjoining it or distant therefrom, shall serve as a basis for claiming any indemnity whatsoever in favor of any of the owners of the concessions.

CHAPTER III.

FORMALITIES WITH WHICH THE AUTHORIZATION OR CONCESSION SHALL BE REQUESTED.

ART. 25. When the Government shall deem it proper to construct with public funds one of the railroad lines included in the plan, it shall submit to the Cortes, together with the form of authorization, the following documents:

1. A memorial descriptive of the plan.
2. A general plan and longitudinal profile.
3. An estimate of the cost of construction and the annual cost of repairs and maintenance of the work.
4. An estimate of the material necessary for the operation and the annual cost of its repair and maintenance.
5. A schedule of the highest rates to be demanded for fares and transportation.
6. Such other conditions as may be deemed proper.

ART. 26. Individuals and companies who may desire the concession of a railroad line declared to be of general service, shall address their petition to the Secretary of Public Works, and must present with it the documents constituting the plan, and must also show that there has been deposited as a guaranty of the plan 1 per cent of the total cost of the works and the material for the operation of the line, according to the estimates.

ART. 27. The plan being approved and the conditions of the concessions being mutually accepted, the Government shall present to the Cortes the proper form of Law, with the document mentioned in Article 25.

ART. 28. When individuals or companies desire a declaration that the railroad line they propose to construct is of public service, they shall

address their petition to the Secretary of Public Works, together with a memorial and a general plan and profile of the line. The said Secretary shall then give a hearing, at which the Provincial Deputations and the Municipal Corporations interested in the construction may be heard, as well as the corporations and authorities which, in their judgment, may shed light on the subject, as well as the Consulting Board of Roads, Canals, and Ports; and he shall then submit, as a result of this hearing, the form of Law to the Cortes in order that the railroad be included in the plan of those of general service. This declaration being made, the proceedings determined by the articles of Chapter III to grant the concession, if there be grounds for it, shall be followed.

ART. 29. When two or more petitions are presented with different plans, so that a railroad of public service is declared of general utility, a hearing on all of the plans, as provided for by the previous article, shall be given, so that the law making the declaration shall redound to the benefit of the one offering greater advantages to the general interests of the country.

CHAPTER IV.

PRIVILEGES AND GENERAL EXEMPTIONS GRANTED TO COMPANIES HOLDING CONCESSIONS OF RAILROADS OF GENERAL UTILITY.

ART. 30. Foreign capital employed in the construction of railroads, and loans for this purpose, shall be under the protection of the State, and are exempt from reprisals, confiscations, or attachments by reason of war.

ART. 31. The following shall be granted to all railroad companies of general utility:

1. The public lands which the road and its appurtenances may have to occupy.

2. The rights which the inhabitants of the districts through which the line passes have to cut timber, to pasturage, and other rights, shall be enjoyed by the employees and laborers of the companies, and for the care of its draft animals employed in the works.

3. The right to open quarries, gather loose stone, construct lime, chalk, and brick kilns, to deposit materials and to establish workshops on lands adjoining the lines. If these be public lands, the right shall be used after giving previous notice to the local authority; but if they be private property, or property of the province or municipalities, the lands may be used only after the parties have agreed, either by mutual consent or by virtue of the law of eminent domain, with reference to the temporary occupation.

4. The exclusive right to collect, while the concession lasts and according to the schedule of rates approved, the rates charged for passengers and freight, without prejudice to those belonging to other companies.

5. For the lines which can revert to the State, the exemption from the mortgage charges due on account of the charges for transfers of property, made by the construction of these railroad lines and their appurtenances, by virtue of the law of eminent domain, as well as those arising from contracts for the same purposes, made by the companies with individuals.

CHAPTER V.

FORFEITURE OF THE CONCESSION OF RAILROADS OF GENERAL SERVICE.

ART. 32. The declaration of the forfeiture of the concession of a line of general service shall always be made after proceedings instituted in accordance with the Regulations.

ART. 33. In order to declare the forfeiture of a concession the full council of State must be heard.

ART. 34. The holder of the concession may appeal from the decision of the Government, declaring the forfeiture to the administrative officers where these matters are in controversy within the period of two months from the day of publication in the Official Gazette.

If he does not appeal within this time the ministerial decision shall be considered as consented to, and there shall be no recourse whatever against it.

ART. 35. The forfeiture of a concession on account of failure to perform, attributed to the holder thereof, shall always be accompanied by the loss of the bond to the benefit of the State.

ART. 36. The concessions of railroads included in this chapter shall lapse in any of the following cases:

1. If the works are not commenced or finished within the time fixed by the law of concession, except in cases of force majeure, so declared after proceedings, in which the full Council of State shall be heard. When any of these cases occur, and are duly proven, the time prescribed by the Secretary of Public Works may be extended for the period absolutely necessary, which can never exceed that fixed in the concession for the construction of the works. The extension having ended, the concession shall lapse if the provisions prescribed at the time of its execution are not fulfilled.

2. If the public service of the line be totally or partially interrupted, except in cases of force majeure, declared to be such in the manner prescribed by the first paragraph of this article.

3. When the company owning the concession is dissolved by an administrative or judicial act, or declared in bankruptcy.

ART. 37. In the cases of forfeiture by dissolution or bankruptcy, the Secretary of Public Works shall take possession of the works and of the fixed and rolling stock, taking charge of the operation through a council which he shall appoint, in which he shall give representation to the stock and bond holders and to the creditors of the lapsed company.

ART. 38. If, when the forfeiture is declared, the works have not been begun, the administration shall be freed from all liability to the holder of the concession. If any of the works had been executed, or all of them, they shall be sold at auction, awarding the concession to the best bidder. The new owner of the concession shall then pay the former owner the amount offered at the auction.

The basis for this auction shall be the amount, according to appraisal, of the cost of the plan, the land purchased, the works executed, and the construction and operation material on hand, deducting the payments made to the concessionaire and delivered to the same in land, works, specie, etc. The appraisal shall be made by the Engineers of Roads, Canals, and Ports, whom the Secretary of Public Works may select, and by the experts appointed by the concessionaire.

ART. 39. If no bidder appears at the auction mentioned in the preceding article, a new auction shall be advertised during the period of two months, and with the basis of two-thirds of the amount of the appraisal. If no bidders appear at this new auction, a third and last auction shall be advertised during the period of one month, without any fixed basis.

ART. 40. If at any of the three auctions referred to in the preceding articles bids were made within the advertised conditions, the railroad shall be awarded to the best bidder, who shall pay as a guaranty the amount of 3 or 5 per cent of the value of the works, to be executed in accordance with the concession; and the effects of this law shall be applicable to the new concessionaire, the same as they were applicable to the former, and he shall be liable to all the provisions, substituting the former concessionaire in all his liabilities and rights.

ART. 41. From the cost of the works auctioned, which the bidder shall pay, as provided for by the previous article, the expenses of appraisal and auction shall be deducted, and the remainder shall be delivered to whom it may rightfully belong.

ART. 42. In case the concession is not awarded in any of the three consecutive auctions, the State shall take possession of the works, to continue them if it was considered convenient in accordance with the provisions of the law, without the original holder of the concession having the right to any indemnity whatsoever.

CHAPTER VI.

CONDITIONS OF CONSTRUCTION TO WHICH THAT OF RAILROADS FOR GENERAL SERVICE MUST CONFORM.

ART. 43. The railroads of general service shall be constructed according to the following conditions:

1. The gauge of the track or distance between the two interior sides of the rails shall be 1 meter 67 centimeters (6 Castilian feet).

2. The gauge of the tracks shall be 1 meter and 80 centimeters (6 feet 6 inches Castilian measurement).

3. The other dimensions, as well as the other conditions of construction, shall be fixed in each particular case by the Secretary of Public Works after hearing the Consulting Board of Roads, Canals, and Ports.

4. The roads of general service may be constructed with one or two tracks or by combining these systems.

ART. 44. When lines not included in the general system are to be established the technical conditions mentioned in the preceding article may be modified, and those to which the line must conform shall be fixed in a special law, which must precede the concession.

CHAPTER VII.

OPERATION OF RAILROADS.

ART. 45. Every railroad shall have two distinct uses—for passengers and for freight.

ART. 46. The charges for each shall be fixed by the schedules of rates in force for each line.

ART. 47. The document of conditions of the concession shall designate the special schedule of rates for certain services to the State as well as those which are free. Among the latter is the carrying of the regular mails, which, as well as everything necessary for the operation of railroads, shall be determined by the Secretary of Public Works, with the concurrence of the proper Secretaries, as the case may be.

ART. 48. From the carrying companies and from individuals who use their own materials the legal freight only may be demanded.

ART. 49. After the first five years that the railroad is in operation, and thereafter every five years, a revision of the schedules of rates shall be made.

If the Government, without injury to the interests of the company, believes that the rates may be lowered, but the company does not agree to the reduction, it may, nevertheless, be made by a law, guaranteeing to the company the total earnings of the last year and, besides, the average progressive increase of the earnings which they may have had in the last five years.

ART. 50. The companies may at any time reduce the schedule of rates as they may deem best, advising the Secretary of Public Works.

ART. 51. When schedules of rates are to be changed it shall be duly announced beforehand to the public.

ART. 52. There shall be established along the roads a telegraph line, the number of wires of which, and other conditions as to the general and official service, shall be determined in the document of conditions of the concession.

ART. 53. When the public service of the company is totally or partially interrupted owing to its own fault, the Government shall, as a matter of course, take the steps necessary to secure said public service temporarily at the expense of the company.

Within a period of six months the company holding the concession must prove that it has sufficient means to continue its operation; the company may cede the operation to another company or third person, after a previous special authorization of the Government,

If even by this proceeding the service is not renewed the concession shall be considered as forfeited and, therefore, what is prescribed by the articles of Chapter V shall be complied with.

ART. 54. The operation of railroads belonging to the State shall be carried on by the Government or by companies which may contract for the service at public auction, as it may be best for the interests of the public.

ART. 55. In all concessions there shall be stated the right of the Government to the necessary supervision and intervention, so as to keep the service of the railroad in good condition and to secure the expenses and receipts of the company.

ART. 56. In the Law and Regulations to be made for the police of railroads there shall be determined whatever is proper for their maintenance and security.

CHAPTER VIII.

PLANS FOR RAILROAD LINES.

ART. 57. The Secretary of Public Works shall order that plans of the lines included in the general system be made, or those begun be completed, by Engineers of Roads, Canals, and Ports, so that with the respective plans of the lines the Government may submit to the Cortes the proper form of law authorizing the auction.

ART. 58. The Secretary of Public Works may authorize individuals or companies to make plans so as to collect the facts and documents which, according to the provisions of this Law, are necessary to obtain the concession of a line. This authorization can not be understood as granting any right whatever against the State, nor limiting in any way the right which the Department of Public Works has to grant equal authorizations to those who may want to study the same line.

ART. 59. The concession for plans shall be preceded by the deposit of the bond, that the Secretary of Public Works shall consider sufficient, to answer for the damages which the said study may occasion in the lands traversed by the line.

The approval of the plans shall not take place until it has been gone over on the ground by the Engineers of the State and the opinion given by the Consulting Board of Roads, Canals, and Ports.

CHAPTER IX.

INTERVENTION OF THE GOVERNMENT IN RAILROADS.

ART. 60. The Secretary of Public Works shall decide all questions regarding the construction and operation of railroads, as well as the police of the same, and the compliance with the document of condi-

tions, including the schedules of rates for storage, loading and unloading, and transportation.

ART. 61. The supervision as to the maintenance and operation of the railroads appertaining to the Government shall be made through the Secretary of Public Works.

The Regulations and special instructions which may be ordered for the fulfillment of this law shall determine the organization of the personnel devoted to this service, the conditions of efficiency which the individuals of the said service must show when they are not experts of Public Works, and the duties of both.

CHAPTER X.

RAILROADS DEVOTED TO PRIVATE USE.

ART. 62. Railroads devoted to the operation of an industry or to private use may be constructed without any other restrictions than those imposed by the Regulations as to safety and public health, provided that the works do not occupy or affect public property nor that there be required for their construction the exercise of the right of eminent domain.

ART. 63. The right to seize by eminent domain can not be granted to a railroad included in the preceding article, nor the occupation of State lands; but public lands may be seized and occupied in conformity with the General Law of Public Works.

ART. 64. When railroads devoted to the operation of an industry or to private use are of such importance that they are capable of rendering public service, the occupation of lands belonging to the State may be granted by means of a Law and the right of eminent domain.

ART. 65. After the concession to which the preceding articles refer has been made, the individual or company obtaining it may construct the railroad and use it as he or it may deem best, with no further intervention on the part of the Government than that relating to conditions of safety, police, and good government of property belonging to the public.

ART. 66. The individuals or companies who desire to construct and operate a railroad of those included in the preceding articles, shall address their petition to the Secretary of Public Works, accompanied by the plans.

ART. 67. The Secretary of Public Works, for his information, shall request all the reports which he may deem proper, the previous opinion of the Consulting Board of the Corps of Engineers of Roads, Canals, and Ports being an indispensable requisite.

ART. 68. These railroads, unless otherwise provided for in a special Law, shall be granted by the Government for ninety-nine years, whenever the occupation of public property is asked for.

When the railroads ask for the declaration of public utility, it shall be the subject of a law.

CHAPTER XI.

TRAMWAYS.

ART. 69. Under the name of tramways are designated, for the purposes of this law, the railroads constructed on the public highways.

ART. 70. The approval of the plans of tramways which are to occupy the roads belonging to the State or Province belongs to the Secretary of Public Works.

The Secretary of Public Works shall also approve, after proper proceedings in accordance with the Provincial and Municipal Law, the plans of tramways, the development of which demands the simultaneous occupation of roads belonging to the State or to the Province and of Municipal roads or the streets of towns.

ART. 71. When the tramways are to be constructed on municipal roads, the approval of the plans shall belong to the Civil Governors, who, in order to grant it, must hear the Engineers in Chief of Roads of the Provinces.

ART. 72. In all cases when the power to be used is other than animal force, the approval of the plans of the tramways belongs to the Secretary of Public Works.

ART. 73. The concession of tramways belongs to the Secretary of Public Works, when the works are to occupy State highroads of two or more Provinces, or shall simultaneously traverse highroads of the State and highways of the Provinces and of Municipalities, after proper proceedings, in accordance with the Provincial and Municipal laws in the last two cases.

ART. 74. When the tramways are to be constructed on highroads which are exclusively in charge of one Province, or traversing two or more Municipalities, the concession belongs to the Provincial Deputation.

ART. 75. The concessions belong to the Municipal Council when the tramways occupy roads which are in charge of a single Municipality. When they are essentially town roads, it must be preceded by the approval of the Interior Department.

ART. 76. Tramway concessions can not be granted for more than sixty years, and shall be subject to an auction in regard to the maximum schedule of rates or to the duration of the concession.

ART. 77. In the Regulations which shall be drawn for the compliance of the present law, the general conditions to which tramways must conform in relation to the technical conditions, as well as to the steps to be taken in the granting of the concession, shall be stated.

ART. 78. In the document of special conditions, which must form part of the concession of every tramway, the special conditions shall be determined which, besides the general ones to which the previous article refers, are to govern in matters of construction and operation.

GENERAL PROVISIONS.

ART. 79. The provisions of the present law shall not invalidate any of the rights acquired previously to its publication and in compliance with the then existing legislation.

ART. 80. All laws, decrees, and other provisions previously existing, which are in opposition to the present law, are hereby repealed.

Therefore, we command all Tribunals, Justices, Chiefs, Governors, and all other authorities, civil, military, and ecclesiastical, of any class and dignity whatsoever, to observe and to see that the present law is observed, carried out, and executed in all its parts.

Given at the Palace on the 23d of November, 1877.

I, THE KING.

C. FRANCISCO QUEIPO DE LLANO,
Secretary of Public Works.

LAW.

Don Alfonso XII, by the Grace of God Constitutional King of Spain.

Know all ye who see and understand these presents: That in accordance with the bases approved by the Cortes which were promulgated as a law on December 29, 1876; making use of the authorization granted by the same law to my Secretary of Public Works; hearing the Secretary of the Navy in the matters of his special competence, and hearing also the full Council of State and the Consulting Board of Roads, Canals, and Ports, and in conformity with my Council of Secretaries,

I have decreed and sanctioned the following law·

TITLE I.

PROVISIONS FOR THE PRESERVATION OF PUBLIC ROADS APPLICABLE TO RAILROADS.

ARTICLE 1. The Laws and Regulations of the Administration as to highways are applicable to Railroads when their object is—

1. The preservation of trenches, drains, walls, buildings, and other kinds of works.

2. The rights (*servitudes*) for the preservation of the roads charged on the adjoining cultivated lands.

3. The *servitudes* on these same lands as to laying out lines, constructions of all kinds, opening of ditches, free course of water, planting, pruning of trees, working of mines, lands, places for dumping refuse ore, quarries, and any other whatsoever. The zone to which these rights extend is 20 meters on each side of the railroad.

4. The prohibitions the object of which is to prevent all kinds of damage to the road.

5. Prohibiting the placing of hanging or projecting objects which may inconvenience or endanger persons on the road.

6. Prohibiting the establishment of deposits of materials, stones, earth, manure, products, or any other thing which may impede free transit.

TITLE II.

PROVISIONS FOR THE PRESERVATION OF ROADS WHICH REFER ESPECIALLY TO RAILROADS.

ART. 2. Along the whole distance of the railroad neither the entry nor the grazing of cattle shall be allowed. If the railroad has to cross a highway where cattle pass, the railroad shall always cross without changing or stopping the progress of the trains and in the manner provided for as a general rule for that crossing.

ART. 3. In the future, in a zone of 3 meters on each side of the railroad, only fencing walls shall be constructed, but no façades having openings or projections. This provision does not refer to buildings constructed before the promulgation of this law or the construction of a railroad, which may be separated and maintained in the condition in which they are, but can not be rebuilt. If it be necessary to demolish or change a building for the benefit of a railroad, the proceedings shall be according to the provisions of Article 11 of this Law.

ART. 4. Within the zone indicated in paragraph 3 of Article 1 no buildings may be constructed covered with thatch or other combustible materials when the railroad is operated by means of locomotives.

ART. 5. The prohibition to establish deposits of materials, earth, stones, or anything mentioned in the sixth paragraph of Article 1, in the case of railroads, includes 5 meters on each side of the road as to objects not inflammable and 20 meters as to inflammable objects.

ART. 6. The prohibition of the preceding article shall not be operative when—

1. The deposits of incombustible material shall not be higher than the road, when the latter is on an embankment.

2. The deposits of materials to be employed for fertilizing and cultivating lands, and harvests during their gathering, are temporary; but in case of fire due to the passing of locomotives the owners shall have no right to an indemnity.

ART. 7. The Governor of the Province may authorize, after hearing the Engineers of the Government and of the Companies, the deposit of uninflammable materials; but the authorization shall be revocable at his will. The Governor may not authorize deposits of inflammable materials.

ART. 8. The railroads throughout their length shall be fenced on both sides. The Secretary of Public Works, after hearing the Company, in case there be one, shall determine for each line the manner in which and time when the fencing is to be made. When railroads cross others

on the same level, gates shall be constructed which shall be closed, and only opened when vehicles and cattle cross, as provided for in the regulations.

TITLE III.

PROVISIONS AS TO THE PRECEDING TITLES.

ART. 9. The distance fixed in paragraph 3 of Article 1 and in Articles 3 and 5 of this Law shall be measured from the lower line of the walls of the embankment of railroads, from the upper line of the clearing, and from the outer border of the trenches. If there be no such lines, the measures shall be from a line drawn a meter and a half from the outside of the railroad. The Regulations will fix the minimum distance from the stations at which buildings may be constructed or deposits established.

ART. 10. The Secretary of Public Works, in special cases, may reduce the distances to which the preceding article refers, after the proper steps are taken showing the necessity or convenience of the reduction, and if no harm is done to the regularity, preservation, and free transit of the road.

ART. 11. Whenever there exist individual rights previous to the construction of a railroad or the publication of this law, which rights can not be enforced, or if it be necessary to abolish these rights on account of the necessity or utility of the railroads, the rules established in the Law of July 17, 1836, shall be observed as to forcible condemnation by reason of public utility, and also the provisions of the Laws of Public Works and the regulations issued for their execution by the Administration.

TITLE IV.

OFFENSES OF OWNERS OF CONCESSIONS AND LESSORS OF RAILROADS.

ART. 12. The owner of the concession or the lessor for the operation of a railroad who shall not comply with the general document of conditions, or the special ones of the concession, or the resolutions for the execution of these clauses in everything referring to the operation of the line, or of the telegraph, or as to navigation, or use of all roads or free course of waters, shall incur a fine of 250 to 2,500 pesetas.

ART. 13. The owner of the concesssions, or the lessor, shall also be obliged to make amends for the errors and damages caused within the time fixed; if he does not do so the administration shall do it, demanding from him the amount of the expenses and attaching the earnings of the stations.

ART. 14. The owners of the concession, or lessors of the railroads, shall be responsible to the State and to individuals for damages caused by the Managers, Directors, and other employees in the service and operation of the railroad and telegraph. If the railroad is operated by

the State, the State shall be subject to the same liability in regard to individuals. Let it be understood that what has been stated in this article is without prejudice to the personal liability which Managers, Administrators, Engineers, and all classes of employees may incur, and the discretionary authority which in cases of strikes, disturbances of public order, and conspiracies appertains to the Government.

ART. 15. The Department of Public Works, without intervening in the appointment of the employees of the companies for the service of operating the railroad, may require the company to dismiss the employees whom it may consider dangerous to the safety of passengers and the maintenance of public order.

TITLE V.

TRANSGRESSIONS AND CRIMES AGAINST THE SAFETY AND PRESERVATION OF RAILROADS.

ART. 16. Any one willfully destroying or damaging a railroad or placing obstacles on it which shall obstruct the free transit or cause the derailing of a train, shall be punished with imprisonment. In case the train has been derailed the imprisonment shall be in the penitentiary.

ART. 17. In case the destruction or damage is caused in time of rebellion or sedition, and the authors of the crime do not appear, the principal authors or leaders of the sedition or rebellion shall incur the penalty imposed in the previous article.

ART. 18. The provisions of the preceding articles shall be understood to be without prejudice to the civil and criminal liability which the guilty parties may incur, for crimes of homicide, wounds, and injuries of all kinds which may occur, and for those of rebellion and sedition.

ART. 19. When two or more penalties concur, the Judges and Courts shall impose the greater in its maximum degree.

ART. 20. Those who threaten the commission of a crime included in Articles 16 and 17 shall be punished with the penalties provided for in Article 107 of the Penal Code. The scale therein established shall be observed, but always imposing the maximum degree, and, when the degree shall be fixed, the next highest one in its minimum degree.

ART. 21. Whosoever through ignorance, imprudence, or by reason of negligence or failure to comply with the Laws and Regulations, causes in the Railroad or its dependencies some damage which may injure persons or property, shall be punished, according to Article 581 of the Penal Code, by reason of gross negligence.

ART. 22. The engineers, conductors, brakemen, station masters, telegraph operators, and other employees charged with the service and care of the line, who abandon their respective posts while on duty, shall be punished with the same penalties. But if some injury is occasioned to persons or things, they shall be punished with the penalty of correctional imprisonment or minor imprisonment.

ART. 23. Those who interfere with the railroad employees, while performing their duty, shall be punished with the penalties which the Penal Code imposes on those who resist the agents of the Government.

ART. 24. Those who violate the Regulations included in Titles 1 and 2 of this law, the Regulations of the Administration, and the orders of the Governors as to police, safety, and operation of Railroads, shall be punished with a fine of 15 to 150 pesetas, according to the gravity and circumstances of the case and its perpetrator. If, according to the Penal Code, they have incurred a graver penalty, only the latter shall be imposed. In case of recurrence of the crime the fine shall be from 30 to 300 pesetas.

ART. 25. Those not paying the fine imposed upon them shall be liable to execution against the person, according to the provisions of Article 50 of the Penal Code.

ART. 26. Without prejudice to the penalties stated in the preceding articles, those who shall have infringed the Regulations of this Law shall destroy the excavations, constructions, and covers, take away the deposits of inflammable material, or of any other kind which may have been made, and repair the damages occasioned in the Railroads. The Mayors shall fix a time for the performance after hearing the representative of the Administration of the Railroad or the Company itself. If within the time fixed this shall not be done, the Government shall do it at the expense of the party who may have disobeyed. In this case the collection of the expenses shall be made in the same manner as that of taxes.

TITLE VI.

PROCEDURE.

ART. 27. Those who commit crimes punishable under this law shall be tried in the ordinary way, whatever be their right to other trial.

ART. 28. Those who have only incurred a fine shall be excepted from the provisions of the preceding article. For the imposition of the fines the following rules shall be observed:

1. The right to inform belongs to the people.
2. The denunciations shall be made to the Municipal Judges in whose districts the transgression was committed.
3. The proceedings and steps in these actions shall be the ones provided for in cases of common transgressions.
4. The testimony of those in charge of the management of the road and the sworn guards shall be sufficient, except when there is evidence to the contrary.
5. Municipal Judges shall see to the fulfillment of the penalties imposed in these cases.

ART. 29. The penalties imposed on the owners of the concessions or lessors of the railroad in the cases mentioned in Article 12 may only be imposed by the Governors after hearing the interested parties, the Chief

Engineer of the Division, and the Council of Administration which hears disputes. The fines imposed by the Governors on the owners of concessions or lessors of railroads shall not be remitted except by the Department of Public Works, after hearing the Council of State.

Therefore: We command all Tribunals, Justices, Chiefs, Governors, and all other authorities, civil, military and ecclesiastical, of any class and dignity whatsoever, to observe and to see that the present law is observed, carried out, and executed in all its parts.

Given at the Palace on the 23d of November, 1877.

I, THE KING.

C. FRANCISCO QUEIPO DE LLANO,
Secretary of Public Works.

REGULATIONS FOR THE EXECUTION OF THE RAILROAD LAW OF NOVEMBER 23, 1877.

CHAPTER I.

FORMALITIES NECESSARY FOR THE DECLARATION OF GENERAL SERVICE OF A RAILROAD LINE NOT INCLUDED IN THE PLAN OF THE STATE.

ARTICLE 1. The lines of general service, constituting the plan of this class of works, having been fixed by Article 4 of the Law of Railroads, in order to make any change in the said plan the formalities expressed in the said law and the provisions of these Regulations must be complied with.

ART. 2. Whenever it may be deemed necessary or convenient to add a railroad line to the plan, a preliminary plan of the same must be made, in conformity with the provisions for such cases of Article 9 of the Regulations of July 6, 1877, for carrying out the General Law of Public Works.

This preliminary plan shall consist of the following documents:

1. An explanatory memorial, in which a general description of the works shall be made, and the convenience of the line and the utility of the railroad, the construction of which is to be of general interest, shall be shown.

2. A general plan and a longitudinal profile, which shall show the direction to be followed by the line and shall demonstrate the possibility of its realization within the technical conditions acceptable in this class of roads.

3. An estimate, as near as possible, of the cost of the railroad, including the rolling stock necessary for its operation.

4. The principal items of the schedule of fares and freights which are to be adopted for the operation of the work; and

5. Statistical data as to the probable business of the road which it is proposed to construct, so as to be able to judge of the advantages to be derived from its construction.

The preliminary plans shall be drawn subject to the existing instructions or those ordered for the purpose by the General Direction of Public Works, Commerce, and Mines.

ART. 3. When the initiative to include a line in the plan comes from the Government, the Secretary of Public Works shall order that the

preliminary project to which the preceding article refers be drawn by the Engineer or a Board of Road, Canal, and Port Engineers, which may be for the purpose designated, the General Direction of Public Works, Commerce, and Mines issuing the special instructions which may be considered proper.

The said initiative may come also from a Municipal Council, Provincial Deputation, or any other official corporation, and also from individuals or companies who are interested in the construction of the line, as provided for in Article 28 of the Law. In this case the interested corporations or individuals shall present to the Department of Public Works a petition accompanied by the preliminary plan and the documents referred to in the preceding article.

In all cases where the declaration of general service is asked for, the petition shall be published in the Gazette and official Bulletins of the proper Provinces, granting a month for the presentation of petitions by other private corporations or companies which may ask the same declaration in their favor. Those wishing to make use of this right shall present their petition within the time fixed, accompanying it with the proper preliminary plan, in order that the proceedings provided for by Article 29 may be followed.

ART. 4. The preliminary plan or plans admitted shall be submitted in the report provided for by Article 28 of the Law, to which these Regulations refer, and the tenth of the Regulations for the construction of Public Works.

After this formality has been complied with the papers shall pass to the Consulting Board of Roads, Canals, and Ports for report as to the technical part of the work, as well as to the propriety of the declaration of general service and as to which of the petitions should be preferred.

ART. 5. In view of the results of the proceedings mentioned in the preceding articles, the Secretary of Public Works shall decide as to the propriety of the declaration requested and as to the preliminary plan which should be preferred. If the decision be in the negative, the matter shall be considered ended without further action, returning the preliminary plan or plans, as the case may be, to the corporations or individuals who may have presented them. If the decision be favorable, the Secretary of Public Works shall present to the Cortes the proper form of Law, accompanied by all the documents relative to the report and the preliminary plan which shall have deserved the preference.

The law having been promulgated, the line shall be declared of general service, being included in the general plan of railroads of this class, and considered as of public utility for the purposes of the law of eminent domain, all in conformity with Articles 5, 6, and 7 of the Special Law of Railroads.

ART. 6. When the declaration of general service shall be asked for

in favor of a line devoted to the operation of coal or iron veins, the proceedings indicated in Articles 2 to 5 of the present Regulations shall be followed; but to the report, referred to in Article 4, shall be added another of an expert, in which the engineers of the branch and the Superior Expert Board shall be heard as to the importance of said mineral veins, as provided for in Article 8 of the Law.

A similar procedure shall always be followed when it is a question of projected branches or important industrial centers, hearing in these cases the Deputations and the Boards of Agriculture of the interested Provinces and the Council of Agriculture, Industry, and Commerce.

CHAPTER II.

CONSTRUCTION OF RAILROADS BY THE STATE.

ART. 7. Whenever the Government shall consider it necessary or proper to proceed with the construction of a railroad declared of general service, with State funds, and by administrative methods or by the usual contract, the Secretary of Public Works shall appoint an Engineer, or a Board of Road, Canal, and Port Engineers, who shall make the proper plans according to the provisions of Article 57 of the Railroad Law.

The Engineer or Board appointed for the purpose shall, above all, make an estimate of the expenses occasioned by the plans, according to Article 4 of the Regulations for the execution of the Law of Public Works, complying with what is prescribed in said article as to the approval of the estimate.

ART. 8. The documents which shall constitute all railroad plans which the Government may order drawn shall be those stated in Article 6 of the Regulations for the execution of the General Law of Public Works, and shall be drafted according to the following provisions:

1. The memorial shall include the description of the line and of the works of greater importance, the number, class, and situations of the stations, and a plan of the laying out of the lines and levels, with a statement of the curves of the lines.

2. A general plan and longitudinal profile of the line, as well as the plans and profiles by sections, and in case of buildings included in the project there shall be added all the necessary details and notes to give a complete idea of the plan.

3. In the document of conditions a description of the works shall be made, and the requisites shall be stated which the materials employed in said work must have, as well as everything relating to manual labor and employment in the works.

4. The estimate shall contain the details of cubic measurement, the prices of the work to be done, and other facts necessary to show the total cost of the railroad.

All these documents shall be drawn according to the forms used for

drafting railroad plans, or according to those provided for in the future, as well as those general rules of the service and special instructions which the General Direction of Public Works, Commerce, and Mines may deem it proper to order.

ART. 9. To the said documents mentioned in the previous article, which are those constituting the plan in its technical part, the following shall be added:

1. A detailed statement of the material which may be necessary for the construction and operation of the railroad.

2. A detailed schedule of the maximum passenger and freight rates, with instructions giving the proper rules for the application of the schedule.

3. Statistical facts as to the probable business of the proposed railroad, calculating, in view of such facts and the application of the schedule, what profits shall accrue from the construction of the work.

For drafting these documents the existing provisions, or those ordered in the future for the purpose by the proper General Direction, shall be taken into account.

The plan shall also be accompanied by the document of special and economic conditions referred to in No. 3 of Article 17 of the Regulations of the 6th of July, 1877, and should contain all the provisions therein stated.

ART. 10. In case the province or towns interested in the construction of a railroad shall oblige themselves to help the State, sharing with it the cost of construction, there shall be added to the papers the memoranda in which the obligations contracted by the said corporations shall be formally stated, with the specifications of the aid offered and the time when it shall be paid to the Government.

ART. 11. The Secretary of Public Works may submit for the report of the Corporations which he may deem competent the plan and documents referred to in the previous articles, but on condition of always hearing the Consulting Board of Roads, Canals, and Ports.

These formalities being complied with, the plan may be approved by the Government.

ART. 12. The plan of a railroad having been approved, the proper form of law shall be presented to the Cortes, asking authorization for the construction of the line, as provided for in Article 10 of the Law of November 23, 1877. Said legislative authorization having been obtained and funds having been appropriated for the purpose, the construction of the line shall be proceeded with according to the plan and the technical economic conditions annexed to it, and according to the provisions of Articles 14 to 17 of the Regulations for the execution of the General Law of Public Works, the towns and provinces interested, in the proper case, being obliged to pay the State the aid which they may have offered.

ART. 13. The construction of a line being finished, it shall be deter-

mined by the Government if the operation of a railroad shall be by the State or by contract, in view of the provisions for such cases of Article 27 of the General Law of Public Works of April 13, 1877, and 53 of the Law of November 23, of the same year. If the work is to be by contract, the contractor shall receive the earnings according to the schedules approved for the use and operation of the railroad, during the time which shall be stipulated, and shall deliver every year to the State a sum as compensation for the expenses incurred in the construction of the line.

The contracts shall always be made by public bids, which shall refer to the most advantageous annual payment to be made, as provided for in the last paragraph.

ART. 14. For the lease of the operation of a railroad constructed by the State, the proper document of conditions shall be carried out which shall be approved by the Secretary of Public Works, after hearing the Consulting Board of Roads, Canals, and Ports.

In the said document there shall be stated:

1. The annual sum to be paid by the contractor, which is to serve as the basis for the bids;
2. The number of years during which the contractor is to enjoy the receipts of the earnings fixed in the schedule;
3. The rolling stock which is to be used in the operation, whenever it is stipulated that the stock is to be paid for by the contractor and not by the State;
4. That the maintenance and repair of the works of all kinds and of the rolling stock shall be at the expense of the contractor during the term of the contract;
5. That the contractor is bound not to interrupt the service unless by reason of force majeure, and to deliver the road in good condition for service at the expiration of the contract, a similar declaration, if deemed proper, being made as to the rolling stock;
6. The causes for rescission of the contract, and the consequences of that rescission; and
7. All the other provisions considered proper, as provided for in such cases by Article 54 of the Regulations of the 6th of July, for the execution of the General Law of Public Works and in Article 28 of the same Regulations in cases of concession.

CHAPTER III.

CONSTRUCTION AND OPERATION OF RAILROADS BY CONCESSIONS TO INDIVIDUALS OR COMPANIES WITHOUT SUBSIDY OR AID OF PUBLIC FUNDS.

ART. 15. The lines of general service, the plans of which may have been studied by the Government, may be constructed by granting concessions to individuals or companies, in conformity with the provisions of the General Law of Public Works and Chapters 2 and 3 of the

Regulations for its execution, according to whether the lines be constructed without any aid whatsoever, or with the subsidies mentioned in the law of railroads of November 23, 1877.

In the construction of a railroad by concession, the general conditions fixed or which may in the future be fixed shall govern, as well as the technical conditions forming part of the plan and the special and economic conditions which may be stipulated in each case. Those conditions undetermined in the general ones, shall be made special; also the schedule rates, the dates on which the work is to begin and end, the amount of bond to be given, and the other special clauses which may be determined on for the granting of the concession.

ART. 16. The study of a line declared of general service may be made by individuals or companies, provided these shall petition and obtain the superior authorization which is required for that purpose by Article 58 of the Law of November 23, 1877.

The authorization shall be granted with the formalities stated in Article 59 of the same Law, and in 21 of the Regulations of the General Law of Public Works.

The plans which may be presented by individuals shall consist of the same documents, and be drafted in the same form, as those mentioned in Articles 8 and 9 of the present Regulations for Railroads constructed on account of the State.

ART. 17. The individuals or companies who ask for a concession of a line declared of general service, without subsidy, shall present to the Secretary of Public Works a petition, accompanied by the complete plan of the road, drawn according to the provisions of the previous article, and by the document showing that the deposit of one per cent of the amount of the estimate has been made. The plan being presented, the petition shall be published in the *Gaceta de Madrid* and in the official Bulletins of the interested Provinces, granting a time of thirty days, which can not be extended, for the admission of other petitions for concessions which may be better than the one presented, according to the provisions of Article 64 of the General Law of Public Works.

ART. 18. If the time fixed in the previous article has elapsed, and no other new plan has been submitted, that of the petitioner shall be sent to the Engineer in Chief of the proper Division, so that he may compare it on the ground and report as to the plan of the line. The expense of the comparison shall be borne by the petitioner, who must deposit the amount in the Provincial Treasury, as is provided for in Article 24 of the Regulations for the execution of the General Law of Public Works.

After the project has been returned by the Engineer in Chief, it shall be submitted for the report provided for in Article 24, and afterwards passed to the Consulting Board of Roads, Canals, and Ports, whose opinion shall not only refer to the technical part of the plan but also

to the examination of the proposed schedules and other circumstances, which are to be taken into consideration in granting the concession, as stated in Article 26 of said Regulations.

ART. 19. If, after all the steps are taken, it be necessary or advisable to modify the plan, either in its technical or economic part, or in the conditions under which the concession is to be made, it shall be returned to the petitioner for him to make the proper corrections within the time fixed for the purpose, or for him to withdraw his petition if it be not convenient for him to modify his plan.

When the interested party shall not be satisfied with what is finally decided by the Government as to the points in controversy, the plan shall be considered abandoned, and shall be returned to the petitioner, together with the deposit which may have been made.

ART. 20. In the case to which the preceding articles refer, namely, when it is a question of a petition for a concession without subsidy, and for which only one proposition shall have been presented, said concession shall be granted without the formalities of public auction; but always by means of a Law, as provided for in Article 27 of the Law of Railroads.

To this end the Secretary of Public Works shall present to the Cortes the proper form of Law, accompanied by all the documents mentioned in Article 25 of the Law of November 23, 1877, and in the corresponding articles of these Regulations.

ART. 21. The law to which the preceding article refers being passed, and the bond of 3 per cent of the amount of the estimate being deposited within the time fixed by Article 16 of the Law of Railroads, there shall be issued to the interested party, or to the company which may have solicited the concession, the proper instrument, making the contract a public document, and including in it, verbatim, the document of general conditions, the special law of concession, the special and economic conditions, and schedule of maximum rates.

During the number of years fixed by the law of concession, which shall not exceed ninety-nine, the owner of the concession may operate the road and enjoy the privileges and exemptions mentioned in Chapter IV of the Law of Railroads, as well as the right to seize by eminent domain, according to existing provisions, the lands and buildings necessary for the construction of the work.

ART. 22. The owner of the concession shall proceed in the construction of the work according to the conditions of the concession, and under the inspection which appertains to the Government agents, as determined by the General Law of Public Works and Article 40 of the Regulations of July 6, 1877.

During the construction no changes or modifications may be introduced which shall not have been duly authorized, after reports of the Engineers in charge of the inspection and supervision of the works and the opinion of the Consulting Board of Roads, Canals, and Ports.

The bond of 3 per cent shall not be returned to the owner of the concession until he shall show that he has work completed of a value equivalent to a third of the amount of that embraced by the concession, as provided for in Article 17 of the Law of November 23, 1877.

ART. 23. The work being all concluded, the owner of the concession shall make, at his own expense, with the assistance of the Government Engineers, the survey and detailed plan of the railroad and all its appurtenances, drawing also a descriptive plan of the stations, bridges, buildings, and constructions which may have been made.

Of each of the documents and plans mentioned in the preceding paragraph, and of the notes of the survey, a copy properly legalized shall be delivered by the owner of the concession to the General Direction of Public Works during the first year of the operation of the line or section of the line to which they refer.

ART. 24. A railroad, or part of it, shall not be placed in operation without the authorization of the Secretary of Public Works, after report on the examination of the work and construction material, drafted by the Government Engineers charged with the inspection, and in which it shall be declared that the railroad may be open to the public. Said report shall be sent to the Government by the Governor of the proper Province, with his own report.

ART. 25. The companies owning concessions shall operate the railroads during the years fixed by their concessions in conformity with the approved schedule and according to the conditions which may have been stipulated for its application.

The said companies shall draft the necessary Regulations for the good service, administration, and operation of their lines, submitting the Regulations to the approval of the Secretary of Public Works when they affect the safety of the operation or the relations of the public to the companies.

The owners of the concessions are at liberty to choose, without any other restrictions than those imposed by existing provisions, the personnel of all classes for the construction and operation of the lines, as well as the organization of this personnel, and everything pertaining to the internal government of the companies.

The Secretary of Public Works shall exercise through his agents the inspection and supervision which belongs to him by law, not only as to the expert, but also as to the administrative supervision, the companies owning concessions complying with the orders which the said agents shall communicate to them within the scope of their authority and according to the provisions in such cases.

ART. 26. The companies shall be obliged to keep in good condition the railroad and its appurtenances, so that travel may be constant, easy, and safe. All the expenses for maintenance and repairs, ordinary as well as extraordinary, shall be defrayed by the companies.

The railroads shall be considered and cared for like other public

roads, and the trackmen who shall be named by the companies owning concessions may use the same arms and enjoy the same privileges as the road repairers (*peones camineros*) of the highways of the State. In order that the said trackmen may be entitled to claim these privileges, they must wear the badge agreed on by the companies, which they are to use while performing their duties.

ART. 27. Whenever the Government may consider it proper to revise the schedule in conformity with the right which is given it by Article 49 of the Law, it shall proceed, whatever may be the change intended, to an investigation, in which there must be heard without fail the company owning the concession, or the Board of Agriculture, Manufactures, and Commerce of the Provinces traversed by the Railroad, or the Deputations of the same, the Engineer in Chief of the Division, the Governors, the Consulting Board of Roads, and the Superior Council of Agriculture.

After the investigation has been concluded there shall be ordered, in a proper case, by means of a Royal Decree the reduction to be made in the schedules; and, if the company owning the concession does not consent to the reduction, the Secretary of Public Works shall submit to the Cortes the proper form of Law to carry the reduction into effect, and to determine the means for guaranteeing to the owner of the concession, the earnings of the year preceding the revision and the progressive increase of the receipts, which the railroad may have had in the five years which terminated with said year.

ART. 28. Besides the cases of forfeiture provided for in Article 36 of the Railroad Law, there shall be also those determined by the Special Law of concession, and by Article 61 of the General Law of Public Works.

ART. 29. For the purposes of Article 36 of the Law, the following shall be considered cases of force majeure:

1. Floods or rising of rivers whenever they are greater than those that by tradition, or in any other trustworthy manner, are known to have occurred in more or less distant epochs.
2. Fires occasioned by the electricity of the atmosphere.
3. Epidemics.
4. Earthquakes.
5. The sinking of the earth and landslides, where the work is constructed or to be constructed, as well as the breaking off of great blocks or masses of mountains, or extraordinary snowslides.
6. The destruction caused in time of war by belligerent forces or those occasioned by sedition of the people.
7. Robbery by mobs and violent destruction. And
8. In general those extraordinary accidents, the effects of which are evidently irresistible.

ART. 30. Whenever the owner of a concession shall ask for an extension to finish the works of his concession, based on damages produced

by an unforeseen accident, he shall address himself to the Secretary of Public Works within the period of twenty days, which can not be extended, counted from the date of the occurrence, stating the damages which have occurred or injuries occasioned, the causes to which they may be attributed, the means employed to avoid the damages, and the time which, in his judgment, shall be required for the repairs.

After hearing the Chief Engineer of the Division to which the line belongs and the Railroad Section of the Consulting Council, the Secretary of Public Works shall draft an interrogatory, so that it shall serve as a basis for the investigation to be made of the fact.

In this investigation the Provincial Deputations, the Municipal Councils of towns in which the damage may have occurred, the Chief Engineers of the same Province and that of the proper Railroad Division shall be heard.

The proper Governors shall direct the investigation in whatsoever refers to their Provinces, and after it has been concluded the paper shall be sent with their report to the General Direction of Public Works, Commerce, and Mines.

The said papers shall afterwards pass to the Consulting Board of Roads, Canals, and Ports, so that it may report as to the declaration of unavoidable accident and as to the petition of extension made by the owner of the concession.

The full Council of State shall finally be heard in conformity with the provisions contained in paragraph 1 of Article 36 of the Law of Railroads.

ART. 31. The provisions of the preceding article having been complied with, the Secretary of Public Works may extend the time fixed in the Law of Concessions, bearing in mind the provisions of said Article 36 of the Law.

Similar proceedings shall be instituted when the owner of the concession shall desire to avoid forfeiture because of the total or partial interruption in the operation of the railroad by reason of unavoidable accident or of force majeure; the request in such case shall be passed upon by the Secretary of Public Works.

ART. 32. The proceedings for forfeiture of a concession may be commenced by the Secretary of Public Works on his own initiative, or by virtue of an appeal of the Chief Engineer of the Division, the Deputation, the Board of Agriculture, Manufactures, and Commerce of any of the interested Provinces, or the Governors of the same.

The official or corporation which may consider that there is a case of forfeiture, shall address the Secretary of Public Works in a memorial, giving the reason on which the appeal is based. This petition shall be passed to the owner of the concession, so that he may answer the charges, and afterwards, on this basis, an investigation shall be made by the Governors of the interested Provinces in which the authorities and corporations mentioned in the first paragraph of the present article

shall be heard, and, lastly, said authorities shall submit the result of their investigation to the Secretary of Public Works.

The papers shall again be passed to the owner of the concession, fixing a time, which can not exceed thirty days, for him to state whatever he may consider best in his defense, after which the Consulting Board of Roads, Canals, and Ports, and the full Council of State shall be heard.

In view of the report, if it be proper, the forfeiture shall be declared by the Secretary of Public Works. The owner of the concession may appeal from this decision, according to the provisions of Article 34 of the Law of Railroads.

ART. 33. The consequences of the delaration of forfeiture of a railroad line shall be those specified in Articles 37 to 41, inclusive, of the Law of Railroads.

When a concession is finally declared forfeited, in order that the said provisions shall take effect, the Engineers of the State appointed by the Secretary of Public Works and the experts appointed by the concessionaire shall proceed to the contradictory survey and valuation of the work constructed in the line, the material collected for the same, the rolling stock devoted to its operation, as well as all kinds of buildings and appurtenances. The survey and valuation shall be adjusted to the rates of the estimate which accompanied the plan of the road, and a memorial explaining the operations made shall be added, stating the condition of the work and material at the time the appraisal is made, and the real value, if they have suffered any damage by reason of age or wear, or by defects of construction, as well as the plans of the road, and of all kinds of buildings and work. Should any difference of opinion about the appraisal exist between the State Engineers and the representatives of the company, each part shall make a separate report, stating the facts about which there is any difference and the grounds thereof.

The opinion of the Consulting Board of Roads, Canals, and Ports shall be heard afterwards, as to the survey and valuation, and as to the claims of the interested party, in the proper case.

ART. 34. The valuation of the works and materials, made in conformity with the provisions of the preceding article, and duly approved afterwards by the Secretary of Public Works, shall serve as the basis for the application of Articles 37 to 41 of the Law.

From the final amount of the appraisal, the bond, or part of it, returned, at the time of the declaration of forfeiture, to the owner of the concession, shall be deducted, according to Article 69 of the General Law of Public Works, and Article 35 of the Special Law of Railroads. The expenses of the appraisal shall also be deducted, and the remainder shall be the basis for the auction referred to in the articles mentioned of the said general law.

ART. 35. At the expiration of the time of the concession the Government shall take the place of the company owning the concession, with all the rights of property to the lands and work mentioned in the said statement or plan, referred to in Article 23 of these Regulations, and shall immediately enter into possession of the railroad, together with all its appurtenances and earnings.

The company shall be obliged to deliver, in good condition for service, the railroad and its appurtenances, such as stations, wharves, stores, at the starting and terminal points, guard and watch houses, offices, etc.

It shall also be obliged to deliver, in good condition for service, the rolling stock in the minimum amount determined by the special conditions of the concession.

ART. 36. Two years before the legal termination of the concession the Secretary of Public Works shall appoint an Engineer or a Commission of Engineers to make the general examination of the line and of all its dependencies, as well as of the rolling stock of all kinds and other material which the owner of the concession is to deliver to the State, according to the preceding article. The Secretary of Public Works shall be immediately advised of this examination and in view thereof shall order whatever is necessary, so that the work, building materials, and other appurtenances shall be in good condition on the day when the owner of the concession is to make the delivery. If the owner of the concession refuses to obey the orders communicated to him, the Secretary of Public Works shall order their execution at the expense of the company, even if for that purpose it shall be necessary to attach the earnings of the railroad.

ART. 37. On the day of the expiration of a concession, the company owning the concession shall make formal delivery of the road, its material and appurtenances, according to the stipulated condition, to whomsoever the Secretary of Public Works shall appoint, with a detailed inventory, and according to the special instructions in the premises. A memorandum of the delivery shall be drafted and signed by the representative of the Secretary of Public Works and the concessionaire. The document shall be forwarded to the Secretary of Public Works, without whose approval the delivery shall not be considered valid. Said approval shall only be given after hearing the Consulting Board of Roads, Canals, and Ports.

ART. 38. The memorandum of delivery being approved, the road, with all its appurtenances and material, shall pass into full possession of the State, its operation being carried on at the expense of the State and under the Secretary of Public Works.

If the Government should decide that the operation is to be made by contract, the provisions of Articles 13 and 14 of these Regulations shall be followed, the company whose concession has terminated being preferred on equal conditions, if the said company shall see fit to make use of the right conferred upon it by this article.

ART. 39. If, within the time fixed in Article 17 of the present Regulations, one or more petitions for concessions have been submitted, an examination on the ground stated in Article 18 shall be made of each plan admitted, as well as the investigation provided for in Article 24 of the Regulations of the General Law of Public Works. This investigation shall be enlarged so as to compare the plans submitted, in order to ascertain if any one deserves the preference.

The Consulting Board of Roads, Canals, and Ports, and the Department of the Interior of the Council of State, shall then make a report thereon of the preference to be given to one of the plans in competition, being determined by a Royal Decree, so as to grant the concession requested to its author, and to return the plans as well as the corresponding deposits to the individuals or corporations which presented the same.

The proper Law having been promulgated, according to the provisions of Article 20 of these Regulations, the subscriber of the accepted proposal shall be declared the owner of the concession, after he has made the deposit of the bond of 3 per cent of the estimate, within fifteen days, counting from the date in which the order granting the right is communicated to him.

ART. 40. If it be found from the investigations, in the opinion of the Secretary of Public Works, that among the best propositions of petition for the concession of a railroad line, there is an equality of conditions in two or more of the said propositions, the concessions shall be made after the bidding at a public auction, in which the first plan presented shall serve as a basis, provided its author shall be satisfied with the changes he may have had to make according to the provisions of Article 19 of these Regulations.

If he should fail to agree, the plan which is to serve as a basis for the auction shall be designated, according to the provisions for such cases of Article 34 of the Regulations of the General Law of Public Works.

ART. 41. The plan which is to serve as a basis for the bidding being determined, and before presenting to the Cortes the form of Law of the concession, an appraisal of the plan shall be made, complying in all respects with the provisions of Article 35 of the Regulations for the execution of the General Law of Public Works.

This formality being complied with and the law of concession being promulgated, the auction shall be advertised for three months. At the auction not only the subscribers to the proposals presented and admitted may participate, but all those who may desire to do so and show a certificate of having deposited 1 per cent of the amount of the estimate made.

The proceedings to be followed at the auction shall be the same as those provided for in Articles 36, 37, and 38 of the Regulations of the General Law of Public Works, the concession being declared granted

to the bidder offering the best terms, with the understanding that the subscriber of the plan which has served as a basis for the auction is to have the right to collect from the auction sale the value of the said plan.

ART. 42. The concession being approved, the owner of the concession shall deposit within fifteen days from the date on which the decision of the auction shall be communicated to him the bond of 3 per cent of the amount of the estimate which served as a basis for the auction. To this end the proper communication shall be personally delivered to him; a receipt shall be exacted, in which the date of its delivery shall be stated.

In case the author of the plan which has served as a basis for the auction should not be the owner of the concession, he shall prove by a trustworthy document, within a month from the date mentioned in the preceding paragraph, that he has paid the author of the said plan the amount of the appraisal to which paragraph 1 of the preceding article of these Regulations refers.

ART. 43. The party obtaining the concession of a railroad line in any of the cases and terms provided for in Articles 39 and 41 of these Regulations shall have the obligations and shall enjoy the rights which are stated in the existing Laws for concession of works without subsidies, and, finally, in the construction of the works and in the operation of the railroad there shall be observed, as to the concession, the provisions of Articles 22 to 37 of these Regulations.

CHAPTER IV.

CONSTRUCTION AND OPERATION OF A RAILROAD BY CONCESSION TO INDIVIDUALS OR COMPANIES SUBSIDIZED WITH PUBLIC FUNDS.

ART. 44. When the Government itself shall have made the plans of a railroad line in the terms provided for in Articles 7 to 9 of these Regulations, and shall deem it proper to have it constructed by concession, granting a subsidy in any of the forms stated in Article 12 of the Law of Railroads, a hearing shall be had as to the plan and as to the necessity of a subsidy and its nature and amount, the Provincial Deputations, the Boards of Agriculture of the interested Provinces, and the Governors being heard. The Consulting Board shall report, and after this formality is complied with, and in view of the result of the hearing, the Secretary of Public Works shall submit to the Cortes the proper form of Law, in which there shall be stated the clauses of the concession, the schedule according to which it shall be operated, the number of years which the concession is to last, the aid to be given to the owner of the concession, the form and time of paying the subsidy, and the other requisites provided for by the Laws and Regulations.

In the same form of Law there shall be fixed the proportion and form in which, together with the State, the province and towns interested

in the line are to contribute to the subsidy granted, according to the provisions of Article 13 of the Law of Railroads.

ART. 45. The law of concession being sanctioned and promulgated, the line shall be offered at auction within a period of three months.

The public sale shall be held according to the existing instructions, and in order to take part in it the bidders must deposit beforehand, at the place designated by the advertisement, a sum equal to 1 per cent of the amount of the estimate approved.

The subsidy fixed shall serve as a basis for the auction, and the object of the proposals shall be the reduction of the said subsidy.

ART. 46. If the subsidy consists of the delivery to the company of certain works constructed at the expense of the State and according to the provisions of Articles 7 to 12 of these Regulations, the bidding shall be first on the reduction of the schedules, the auction being held according to paragraph 3 of Article 36 of the Regulations of the General Law of Public Works.

If there be two or more of the most advantageous propositions apparently equal, new bids shall be required, as provided for in Article 37 of said Regulations; and if none of the interested parties make any proposition whatsoever in this new bidding, he who shall have obtained the lowest number in the drawing by lot, which shall have preceded the opening of the proposals in the first bid, shall be declared the best bidder.

The record of the auction being made and it being approved by the Secretary of Public Works, he who shall appear as the best bidder in the first or second bids referred to in the previous articles shall be declared the owner of the concession.

ART. 47. If the subsidy consists of the delivery to the company of a part of the invested capital, which part is to be fixed exactly in the law of concession, the auction shall be first on the reduction of the amount of the subsidy, and afterwards, in case of equality of proposals, on the reduction of the schedules; and if there still be equality of proposals, on the number of years of the concession, all in strict accordance with the provisions for such cases of Articles 43 and 44 of the Regulations of the General Laws of Public Works.

ART. 48. In the third and fourth cases of Article 12 of the Law of Railroads, namely, when the subsidy consists in granting the constructor of the line the right to take advantage of other works constructed for public use, compatible with the use of the railroads, or in the exemption of the duties on material of construction or operation, the auction shall be, in the first place, on the reduction of the schedules, and then on the reduction of the number of years of the concession, proceeding in all matters according to the provisions of Article 46 of these Regulations.

ART. 49. The owner of the concession shall deliver at the proper place and at the time fixed in Article 16 of the Law of Railroads a bond equivalent to 5 per cent of the estimate approved; the said amount

shall not be returned until all the works included in the concession shall have been entirely finished. The bond being given, the construction of the works shall be proceeded with according to the clauses and conditions of the concession.

ART. 50. If the subsidy consists of works already constructed by the Government, they shall be delivered to the owner of the concession after making an inventory and appraisal of them, which shall be inserted in the proper record, the owner of the concession signing the receipt therefor.

If the aid consists of the delivery of a sum in specie or bonds and stocks, it shall be paid to the company in the form and time stipulated, always on a certificate of the Engineers of the State charged with the inspection. The payment of the subsidies in these cases shall be made to the company by the Government directly, and the Government in its turn shall be paid by the provinces and the towns the part of the subsidy devolving upon them, as determined by the Law.

When any public work compatible with the use of the railroad is to be delivered to the company owning the concession, the delivery shall be made with the formalities stated in the first paragraph of this article.

If the subsidy consists of the exemption of customs duties, the formalities determined in the existing provisions or those provided in the future by the proper Law or Regulations shall be complied with.

ART. 51. The concession of a railroad, to which a subsidy has been granted, shall be forfeited in the cases provided for by the General Law of Public Works and by the Law of Railroads.

Exception shall be made in the cases of force majeure, set forth in Article 29 of these Regulations, which must be proven in accordance with Article 49 of the General Law of Public Works.

In case of forfeiture, from the appraisal which must be made in accordance with the provisions of Articles 33 and 34 of these Regulations, there shall be deducted the amount of the bond, if it should have been returned, the expenses of the appraisement and auction, and the lands, works, money, or other things of value which may have been delivered to the owner of the concession. The remainder shall be the amount for which the completed works and the materials on hand shall be sold at auction.

The provisions of the Law and the corresponding articles of these Regulations shall be followed in all other proceedings for the purpose of declaration of forfeiture and its consequences.

ART. 52. In the execution of the work the owner of the concession shall confine himself to the approved plan, in which no variations or modifications may be introduced, without the proceedings specified in Article 22 of these Regulations. In such case the consequences of the variations authorized shall be those designated in Article 19 of the Railroad Law.

In the execution of the work and in the operation of a subsidized line, the provisions of Articles 23 to 27 of these Regulations shall be observed concerning the plans and documents which must be made on the completion of the work, the necessity of authorization to begin the operation of the road, the privileges and obligations of the owner of the concession in its operation, and the formalities necessary for a revision of a schedule of rates.

In like manner the provisions of Articles 35, 36, and 37 concerning the formalities with which the railroad shall be delivered at the termination of the concession shall be observed.

ART. 53. When an individual, or a company, desires the concession of a railroad with a subsidy, he shall direct the proper petition to the Secretary of Public Works, accompanying the plan, in accordance with Articles 8 and 9, and proving that the deposit of 1 per cent of the estimate has been made.

In the petition there shall appear the kind of subsidy prayed for, stating its amount and the form in which it shall be made, with a full argument, in order to prove the necessity or desirability of the aid which is asked for.

ART. 54. When the documents referred to in the preceding article have been received, there shall be published in the *Gaceta de Madrid* and in the official bulletins of the interested Provinces the proper advertisements, fixing a period of thirty days for the admission of proposals which might be more advantageous than the first.

If the time fixed should pass and no proposal whatever be made, or if those presented should not be admissible, because of the absence of certain of the requirements of the Law or of these Regulations, the plans shall be forwarded to the Chief Engineer of the proper Division, in order that he may actually go over the ground and make the report referred to in Article 18.

Thereon the proceedings provided for by Article 44 shall be instituted, and as a result of the same the approval of the superior authorities may be given to the plan and other documents.

In case that it should be deemed necessary to introduce any modifications in the plan or in any of the clauses of the concession, the provisions made for such cases by Article 19 of these Regulations shall be observed.

ART. 55. When the plan is approved and when the basis of the concession is agreed upon, the appraisal of the studies shall be made, which shall be done in accordance with Article 35 of the Regulations for the execution of the General Law of Public Works.

ART. 56. The Secretary of Public Works shall present to the Cortes the proper form of Law in order that the construction of the railroad may be authorized.

The said proposed Law shall be accompanied by the plan approved for the line in question with all the other documents necessary to deter-

mine the basis of the concession, the schedule of rates, the kind and form of the subsidy which the State shall give, the part which shall be contributed by the interested Provinces or Municipalities, and the other requisites which are demanded by the Laws and Regulations.

When the Law is promulgated, the concession shall be offered at auction during a period of three months, as provided for by Article 45 of these Regulations; in such case it must be stated that the author of the plan proposed has a right to the concession on the same terms as the highest bidder, and also that otherwise he shall be paid by the person to whom the concession is granted the expenses of his plan, in accordance with the appraisal made, in relation to which the provisions of Article 42 of the Regulations for the execution of the General Law of Public Works shall be observed.

The proceedings, rules, and prescriptions contained in Articles 46 to 52 of these Regulations, referring to the case in which the petition for the construction should have emanated from the Government, are applicable in all respects to the case in hand; that is, to the construction by means of a concession of a subsidized railroad on the request of an individual or company.

ART. 57. If within the time fixed by Article 54 admissible proposals should have been presented for the construction of a railroad, the provisions of the same, concerning going over the plans on the ground and the proceedings which must be had thereunder, shall be extended to them and to the corresponding plans. The Engineer in Chief as well as those reporting shall make the comparison in their decisions of the various plans presented, giving their opinion concerning the order of preference in which they should be considered.

Thereafter the opinion of the Consulting Board of Roads, Canals, and Ports, and of the Department of Public Works of the Council of State, shall be taken concerning all matters involved in the proceedings, and as a result of all this the Secretary of Public Works shall decide which plan should be selected; then proceeding to its appraisal in the manner provided for in analogous cases by these Regulations.

The other plans shall be returned to the authors with the deposits they made on presenting them.

ART. 58. In case the first plan and any other of those thereafter presented should be equally favorable, the first shall have preference and its project shall be the one appraised and shall serve as the basis of the concession.

When two or more of the proposals made after the first shall be equal, the one which was first presented shall have the preference, and its project shall be the one appraised and shall serve as the basis of the concession.

The provisions of Article 23 of the Regulations for the execution of the General Law of Public Works shall be strictly observed in such cases, to prevent all doubt concerning the date of the presentation of such plans.

ART. 59. When the plan which is to serve as a basis for the concession, determined by either of the means indicated in the two preceding articles, according to the circumstances, shall have been appraised, the proper form of Law shall be presented to the Cortes, and concerning the auction or auctions, construction or operation, and delivery of the road, in cases where there is a subsidy, the provisions of Articles 45 to 52 of these Regulations shall be observed.

CHAPTER V.

INSPECTION AND SURVEILLANCE OF RAILROADS.

ART. 60. The direction regarding the construction, operation, and police supervision of the railroads appertains to the Secretary of Public Works, as well as the surveillance which he shall exercise over them, in accordance with Articles 60 and 61 of the Railroad Law, and they shall take their course in compliance with the special instructions which now govern or which may hereafter be adopted, in accordance with the principles laid down in these Regulations.

ART. 61. The inspection which the Government should exercise over railroads is divided into technical or expert and administrative or business inspection. Both classes of inspection shall be conducted by officers under the authority of the Secretary of Public Works, who may order that the personnel of whatever kind assigned to the inspection shall depend on the Chief Engineer of the Division, or that the expert and administrative inspections shall be made by officials independent of each other.

ART. 62. The expenses of the inspection shall be defrayed by the State or by the railroad companies, according to the stipulations in the clauses of the concession of each line.

In case the companies should be obliged to pay all or part of the above-mentioned expenses the payment shall be made directly by the State. The sums which for this purpose are paid by the companies should be credited to the proper items of the appropriation.

ART. 63. The expert inspection shall also be considered divided into two parts, namely, first, that which should be made of the construction, line and works, and technical operation; and, second, that which should be made of the material and traction.

Everything referring to the study, comparison and examination of the plans, to the construction of the lines, preservation and repair of the work, roadway, fixed material and buildings, to the surveillance of the line, of the signals and switches, and to the makeup and velocity of the trains, shall be considered as appertaining to the first division.

The second division shall include everything in connection with the preservation and repair of the rolling stock.

ART. 64. The expert inspection shall be made by Engineers of the Board of Roads, Canals, and Ports, aided by mechanical engineers,

when the Government may deem it proper, by assistants from among the subordinate employees of Public Works, and by watchmen who fulfill the requirements of these Regulations.

ART. 65. The expert inspection shall be made in each of the Divisions created, or to be created in the future, by a Chief Engineer in charge of the employees mentioned in the previous article, in case this service should be separated from the management. The mechanical engineers serving in the Divisions, shall be especially in charge of the preservation and repair of the rolling stock, discharging their duties under the orders of the Engineers of the proper Divisions.

ART. 66. The expert officers who make the technical inspection shall be appointed by the Secretary of Public Works in the same manner as those serving in the Department of Public Works. Mechanical engineers shall be appointed in like manner. Watchmen serving under the expert inspectors shall be appointed from the list of retired soldiers who may have served in expert corps or in the civil guards (*guardia civil*), provided they receive recommendations for good behavior in their discharge papers.

Employees of this class shall not be removed from the service, except for malfeasance or misfeasance committed therein, after proceedings instituted in accordance with the rules established for that purpose.

ART. 67. All that concerns the business operation, the relations between the public and employees of the company engaged in that branch, to the jurisdiction and supervision which the Government should exercise over these employees, and the safety of travel, in case of attempt to wreck the trains, or in case of public disturbances, is under the charge of the administrative inspection of railroads.

ART. 68. The employees of the Administrative Inspection shall consist of Chief Inspectors, Special Inspectors, and Commissaries, whose number and salaries shall be fixed in the appropriation bills, in accordance with the necessities of the service.

ART. 69. The employees connected with the Administrative Inspection shall be appointed by the Secretary of Public Works in accordance with the present provisions, or with those that shall in the future be adopted, of the Laws and Special Instructions in this connection.

Said employees shall have accurate knowledge of the General Laws of Railroads, of their conditions and schedules of rates under the Law, and the police Regulations of the same, and such directions as may have been issued by the Government and by the companies concerning the telegraph service and the business operations of the lines.

ART. 70. Inspectors and Assistant Inspectors in charge of the administrative inspection of railroads can not be removed except through malfeasance and misfeasance in office, and after the proper proceedings in accordance with the rules established for this purpose.

CHAPTER VI.

RAILROADS DEVOTED TO PRIVATE USE.

ART. 71. Railroads devoted to the service of an industry or to private use, for the construction of which the use of public lands is not required nor condemnation proceedings desired, may be built without any other formality than a notification to the Superior Civil authority of the proper Province, and may be thereafter operated without any other restrictions than those imposed by the Health Laws and Laws for the Public Safety, in the manner determined by Article 62 of the Railroad Law.

ART. 72. When an individual or company desires to build a railroad line for the service of a private industry, and needs for that purpose the use of public lands, the interested party shall present to the Secretary of Public Works a petition accompanied by the proper plan.

This plan shall only be in the nature of a memorial explaining it and a description of the route, a general plan and a general profile, the particulars of the public lands traversed by the line, the plans and grades of the construction proposed for said lands, and the approximate estimate of the cost of these works.

ART. 73. The papers mentioned in the preceding article shall be sent to the Governor of the proper Province, who shall open the investigation concerning these works as prescribed by Article 67 of the Railroad Law. The Governor shall hear in this proceeding the Municipal Councils of the towns traversed by the line, the Provincial Deputation, and the Chief Engineer of the Province. Said official shall then send the papers, with his report, to the Secretary of Public Works, who, by means of a Royal Decree, may grant the authority asked for after hearing the Consulting Board of Roads, Canals, and Ports.

When the authority is granted, the petitioner may construct and operate the road without other restrictions than those imposed by the public health and public security and the conditions which may have been imposed in the order granting the authority for the use of public property which may have been issued.

Before beginning the work the interested party shall give security equivalent to 5 per cent of the estimated cost of the work to be constructed on public lands, which security shall be returned to him when he proves that he has fulfilled his obligations.

ART. 74. The part taken by the administrative agents in the concessions referred to in the two preceding articles shall be limited to seeing that the exact conditions imposed for the building of the work to be undertaken on public lands granted to the owner of the concession are fulfilled.

Authorizations of this kind shall be revoked if the owner of the concession should not absolutely fulfill the stipulations of the order granting the concession; in such case the work done on the public lands

shall be destroyed and all material removed, in order that such lands may be clear and in the same condition as they were before the granting of the concession.

The owner of the concession may appeal in an action against the Royal Decree of revocation, but when the latter is affirmed he shall lose the security given, and the lands granted shall again be public property.

ART. 75. For the construction of all railroads devoted to public service, although not of general interest, and for the construction of all those which, although devoted to a private industry or to private use, may be used by the public, the use of the public domain may be asked for, and also the right of condemnation of private lands, as provided in Article 64 of the Railroad Law.

In such cases the company, individual, or interested party shall direct to the Secretary of Public Works a petition, accompanied by a plan of the line, in accordance with the provisions of Articles 8 and 9 of these Regulations.

The documents constituting the plan shall be annexed to those which the petitioner considers pertinent to prove the necessity of condemnation and to a list showing the municipal districts of the property owners whose estates should be occupied.

ART. 76. The Secretary of Public Works shall send to the Governor of the proper Province the plan and documents mentioned in the preceding article, so that he may institute the investigation prescribed by law. This investigation shall treat simultaneously of the consideration of the occupation of public property and of the desirability of the declaration of public utility.

The Governor shall announce the petition in the *Boletin Oficial*, with a list of the names of those interested in the condemnation, and shall order the petitioner to re-mark the ground, and shall also hear the claims presented before the proper Mayor (*Alcalde*) by the property owners or their representatives, in accordance with Article 156 of the Regulations for the execution of the General Law of Public Works.

The papers shall then go to the petitioner, in order that he may know and answer the claims presented, and the Governor, after hearing the Executive Commission of the Provincial Deputations and the Chief Engineer of the Division, shall forward the proceedings, with his own report, to the Secretary of Public Works.

ART. 77. The Secretary of Public Works shall send the proceedings to the Consulting Board of Roads, Canals, and Ports for report on the technical part of the plan, as well as on the claims and objections that may have arisen, and in order that the basis may be fixed in accordance with which the concession may be granted.

The Secretary of Public Works, with all these antecedents, shall present to the Cortes the proper form of Law, in accordance with Articles 64 and 68 of the Railroad Law.

After the Law is sanctioned and promulgated, the concession shall be granted, and, therefore, subject, ipso facto, to all that may be applicable to the provisions of Chapter III of these Regulations, concerning concessions without subsidy.

CHAPTER VII.

FORMALITIES REQUIRED FOR THE CONCESSION OF TRAMWAYS.

ART. 78. No tramway or railroad established on a public highway may be constructed without its proper plan being made and approved beforehand.

This plan shall consist of—

1. A memorial giving a description of the tramway and showing the advantages which would redound to the public interest by its construction.

2. A general plan, showing clearly the direction of the route, a general profile showing its grades, and the corresponding detailed plan, giving a clear idea of the system proposed to be used on the public highway in the various conditions in which it may be. If towns are traversed, or the tramway be established on the streets of the town, plans on a large scale shall be made of the streets traversed by the line, and its position and relation to the sidewalks and house fronts.

3. The technical conditions in which the works are described and details relative to construction are given.

4. An estimate.

5. And the schedule of rates to be charged in the operation of the tramway, with a calculation of the probable earnings of the company.

ART. 79. The approval of the plan referred to in the preceding article is the attribute of the Secretary of Public Works:—

1. When the proposed tramway shall occupy a State highroad.

2. When it shall occupy a Provincial highroad.

3. When it shall occupy in part a State highroad.

4. When it shall occupy in part a State highroad and in part a Municipal road or street.

5. When it shall occupy both a Provincial highroad and a Municipal road or street.

6. When the motive power shall be other than that of draft animals, whatever may be the kind of public road it may occupy.

ART. 80. The approval of the plan of tramways is the attribute of the Governor of the Provinces when their entire length traverses Municipal roads or streets.

ART. 81. Whenever an individual or company may desire to build a tramway of those designated in Article 79, he shall address his petition to the Secretary of Public Works, accompanied by the plan referred to in Article 78, proving that he has deposited an amount equivalent to one per cent of the estimated cost.

Thereafter the petition shall be advertised in the *Gaceta* and *Boletin Oficial* of the proper Province, fixing one month for the admission of petitions which may be better than the first.

ART. 82. If within the time fixed by the preceding article no other plan may have been submitted, that presented shall go to the Chief Engineer of the Province, so that he may go over the plan on the ground of such part as shall occupy a State highroad.

Thereafter it shall go to the Deputation, through the Governor, in order that the expert Chief of Provincial Works may also go over the plan on the ground as to that part of the tramway which shall occupy Provincial highroads.

And lastly, the Governor shall send the plan to the proper Municipal Council or Councils, so that the proper experts may go over it on the ground as to such part of the work which may occupy Municipal roads or streets within each Municipal District.

The Chief Engineer and the Chief Experts of Provincial and Municipal Public Works, who shall have gone over the plan on the ground, shall state whether the data presented is correct, and at the same time shall report on the technical parts, stating whether, in their opinion, the plan as presented may be accepted, or if there should be a necessity of introducing any modifications.

ART. 83. When, within the period of thirty days, designated in Article 81, there shall have been presented and admitted new plans, these shall likewise go to the Engineers of the State and Provincial and Municipal Expert Chiefs at the same time as the first plan, in order that all may be gone over on the ground in the manner determined by the preceding article.

In such case the report of the Expert Chiefs shall extend to the comparison of the various projects, stating whether anyone deserves the preference, and the reason therefor.

In all cases the expenses of going over the plans on the ground shall be paid by the petitioner or petitioners who submitted the respective plans.

ART. 84. The reports mentioned in the two preceding articles shall be directed to the Governor with the plans they refer to, and when these have been received by said authority he shall order that an investigation be made, as determined in such cases by the General Law of Public Works, the Regulations for carrying it into effect, and Article 87 of these Regulations.

ART. 85. When a tramway which is to occupy a State highroad only is in question, the Chief Engineer of the Province and the Executive Commission of the Provincial Deputation shall be heard in this investigation, and the Governor shall send the proceedings, with his report, to the Secretary of Public Works.

ART. 86. When only Provincial highroads are to be occupied, the Provincial Deputation shall be consulted, which shall make its report

after hearing the expert Director of the Corporation; thereafter the Chief Engineer shall make his report, and, lastly, the Governor shall make his, on sending the proceedings to his superiors.

When the works are to occupy both State and Provincial highroads, similar proceedings shall be followed, adding the report of the Executive Commission, which shall be heard, after the Chief Engineer.

ART. 87. The Municipal Councils of the towns interested shall first be heard, if the tramway shall occupy in part a State highroad and in part a Municipal road or street. A public investigation shall be held in said towns for a period of at least twenty days, at which all the residents who may consider themselves interested may take part, stating what they may deem proper. The Municipal Councils, after having first consulted the opinion of the expert Chiefs, shall report. Thereupon the petitioner shall be heard, in order that he may answer the claims which may have been presented. Thereafter the Chief Engineer of the Province shall be consulted and also the Executive Commission of the Provincial Deputation; and the Governor shall be the last to report on sending the proceedings to the Secretary of Public Works.

ART. 88. Whenever both a Provincial highroad and a Municipal road or street are to be occupied, the interested Municipal Council or Councils shall first be heard, as provided for by the preceding article, and then the Provincial Deputation, which shall report after first hearing the opinion of its expert Director. The proceedings shall then go to the petitioner in order that he may answer the objections and claims which may have been made; and after this formality is complied with, the Chief Engineer and the Executive Commission shall report their opinions referring to the legal questions which might have arisen, and lastly, the Governor, who shall send the proceedings to the Government.

ART. 89. When a road in which the motive power shall be steam or compressed air, or any other than animal power, the investigations referred to in Articles 84 to 88 shall take place according to the specific case in compliance with the rules established therefor, embracing in such case the advantages or disadvantages which the motive power proposed may have, and to the conditions which, in a proper case, should be imposed to prevent the damages which might result therefrom to public travel.

ART. 90. When the plans proposed are two or more in number the investigations shall cover all of them simultaneously, and individuals, officials, and corporations giving information shall state their opinion as to which deserves the preference. In such case the petitioners shall be heard in the investigation in the inverse order of the presentation of their plans, so that the author of the first one presented shall be the last one heard, care being taken by the Governors to fix the shortest possible time for the petitioners to send their replies, with the object of shortening the proceedings.

ART. 91. In all the cases referred to in the preceding articles, after

the proceedings have been received by the Department of Public Works, they shall go to the Consulting Board of Roads, Canals, and Ports for its report concerning the technical part of the plan or plans proposed, as well as the preference which shall be given to one of them, at the same time proposing the conditions in compliance with which, in a proper case, the concession may be granted.

The Secretary of Public Works shall approve the plan presented in view of the proceedings, if this shall be proper, or the one meriting the preference among those accepted.

If from the proceedings there should result that to approve the plan it should be necessary to introduce some modifications, in such case the provisions of Article 19 of the present Regulations shall be observed.

ART. 92. When the plan of tramway shall come within the provisions mentioned in Article 73 of the Railroad Law, that is to say, when the works are to occupy a State highroad and a Provincial highroad, and finally both State highroads and Municipal roads or streets after approval of the plan in the manner prescribed by the preceding article, its appraisal shall be made as is provided for analogous cases by these Regulations.

ART. 93. The Secretary of Public Works who has the power to grant the concession, in the cases specified in Article 73 of the Law, shall immediately advertise the auction of the works, for the period of two months, on the basis of the approved plan.

The auction shall take place in accordance with the provisions of Article 76 of said Law, respecting the schedules of rates, the equality of propositions as to the duration of the concession, and with the understanding that in all cases the right of legal preference shall be reserved at the auction to the author of the approved plan, and if the latter should not take advantage of the preference the successful bidder shall pay him, within one month, the value of the plan, in accordance with the appraisal made.

ART. 94. If from the investigations to be made there should appear an equality of conditions of two or more of the accepted plans, the one first presented shall have the preference, and in this case it shall be appraised and shall serve as the basis for the auction prescribed by the preceding articles.

ART. 95. When the auction is decided the declared owner of the concession shall give, within a period of fifteen days, security equivalent to 5 per cent of the estimated cost, as provided for by the law for subsidized railroads. The owner of the concession shall build the works in accordance with the stipulations and under the inspection and surveillance of the State Engineers in such parts as are occupied by State highroads. In such part as the tramway occupies Provincial highroads the inspection shall be carried on by the expert Directors of Provincial Works, and in such part as the works occupy Municipal roads or streets within towns the inspection shall be carried on by the expert agents of the Municipality.

ART. 96. When the concession expires, the term of which can not be for longer than sixty years, according to Article 76 of the Railroad Law, the Government, the Province, or the towns shall enter into the enjoyment and use of the part of the tramway built in State, Province, or Municipal roads or streets, respectively, in accordance with the special rules laid down in each case, in order to carry out the operation and sharing of the earnings among the interested parties.

ART. 97. The plans and grant of tramway concessions, in which the motive power is other than animal, shall be subject to the same proceedings as those designated in the preceding articles, in which case the Secretary of Public Works may always approve the plans and permit the individuals or companies who request it to construct these roads.

ART. 98. In tramway concessions, made by the Secretary of Public Works in the manner determined by the Railroad Law, all the provisions contained in Chapter IV of these Regulations concerning concessions of subsidized railroads, shall apply in so far as they are practicable and do not conflict with the provisions of the preceding articles.

ART. 99. If the tramway is to occupy one or more provincial highroads, after the approval of the plan by the Secretary of Public Works, in compliance with Article 91, it shall go to the Governor, in order that he may transmit it to the Provincial Deputation, which has the right to grant the concession in such case, as provided for by Article 74 of the Law.

The same shall be observed in the case of the occupation of both Provincial and Municipal roads or streets, when the Secretary of Public Works shall have the power to approve the plan, and the Deputations the power to grant the concession.

ART. 100. The Deputation shall immediately have the approved plan appraised, and shall then advertise the auction, proceeding in all other matters in accordance with the provisions of these Regulations and of the articles which may be applicable of Chapter V of the Regulations of July 6, 1877, which treats of the concessions of the construction of Provincial works.

ART. 101. If the tramway is to occupy Municipal roads or streets only, the petitioner shall send his plan, accompanied by a petition, to the Governor of the Province, who in this case has the right of approval, as provided for by Article 71 of the Railroad Law. The Governor shall order the publication in the *Boletín Oficial* of the proper advertisement, fixing a period of thirty days within which to present proposals which might better the first.

ART. 102. The plan shall then be sent to the Mayor, who shall order it gone over on the ground by the expert Chief of Municipal Works, then submitting said plan to a public investigation, directed by the said Mayor, and at which the residents of the town who deem it proper to make objections and claims shall be heard, for which purpose a time, not less than twenty days, shall be fixed.

The Mayor shall then send the result of the public investigation to the petitioner so that he may reply; then the full Municipal Council shall be heard, and with his report he shall finally send the proceedings to the Governor.

If, within the period of the thirty days mentioned in Article 101, new plans should have been presented and accepted, going over the plans on the ground, the expert report, the public investigations, and the puplic opinions of the Municipal Council and the Mayor shall embrace all the plans admitted, and also concerning the preference which, as a result of the comparison of their respective advantages or disadvantages, one deserves over all the others competing.

ART. 103. The Governor, on the opinion of the Provincial Chief Engineer, shall decide the approval of the plan. When he considers the work of great importance, or when he disagrees with the opinion of the Chief Engineer, he shall send the proceedings with his own report to the Secretary of Public Works, who shall finally decide after hearing the Consulting Board of Roads, Canals, and Ports, as provided for in Article 93 of the Regulations for the execution of the General Law of Public Works.

ART. 104. If the tramway is to occupy Municipal highroads or streets within a single Municipal District, in which case the Municipal Councils have the right to grant concessions in accordance with Article 74 of the Law, the Governor shall send the approved plan to the proper Municipal Council, which, after an appraisal of said plan, shall advertise the auction and grant the concession in accordance with the provisions of Chapter VII of the Regulations of the 6th of July for the execution of the General Law of Public Works.

ART. 105. If the tramway is to occupy roads or streets belonging to more than one Municipality, but within one Province, the plan must be separately submitted to each of the Municipal Districts it traverses, and in each of the towns the study of the plans on the ground and the investigations referred to in Article 102 of these Regulations shall be made.

The Governor of the Province, as soon as he has gathered the proceedings of the interested Municipalities, shall proceed to the approval of the complete plan in the manner provided for by Article 103.

ART. 106. After the approval of the plan by the Governor in the case stated in the preceding article, the proceedings shall go to the Provincial Deputation, which in such case has the right to grant the concession, as provided for by Article 74 of the Railroad Law.

ART. 107. When the Municipal highroads which the tramway is to occupy belong to Municipalities of different Provinces, the investigation and the other proceedings shall be carried out in each one of the Municipalities, as provided for by Article 105, and the Governors shall have to come to an agreement in all points before proceeding to the approval of the plan.

If this agreement is reached, the plan shall be considered approved and the concession shall be granted by the Deputations of the respective Provinces.

Should the Governors differ as to the approval of the plan, the matter shall be decided by the Secretary of Public Works, to whom the proceedings shall be forwarded by the said authorities. The Secretary shall finally decide after hearing the Consulting Board of Roads, Canals, and Ports.

In case there is not an agreement in all points regarding all clauses and conditions between the Deputations interested, the question of granting the concession shall be decided in the same manner. The Deputation in all other matters shall follow the provisions of Articles 99 and 100 of these Regulations.

ART. 108. Concessions of tramways made by Municipalities by virtue of the Law of Railroads and of the corresponding articles of these Regulations shall be subject, in so far as applicable and not in contradiction with what is herein provided, to the provisions of Chapter VII of the Regulations for the execution of the General Law of Public Works.

CHAPTER VIII.

GENERAL CONDITIONS WHICH SHOULD BE OBSERVED IN THE CONSTRUCTION AND OPERATION OF TRAMWAYS.

ART. 109. The Government, hearing the Consulting Board of Roads, Canals, and Ports, shall draw a set of general conditions, which shall be observed in tramway concessions, complying with the provisions prescribed in the following articles of the present Regulations.

ART. 110. Every concession of this kind shall be understood to be made without prejudice to third persons, and protecting private rights according to the provisions of Article 28 of the Regulations for the execution of the General Law.

ART. 111. The security which shall be required from the owners of concessions shall be 5 per cent of the value of the estimated cost of the approved plan, and shall not be returned until all the works included in the concession have been finished.

ART. 112. Tramways must always be established in such manner as not to cause injury nor to impede the travel of the ordinary vehicles which pass over the highroads or the streets which they occupy. In consequence, no system shall be admitted in which the rails project above the level of the road, and in the general conditions there shall be determined the minimum width of the streets in which the tramway may be constructed, fixing the position which the rails must occupy, in order that the tram cars may cross ordinary vehicles in movement and those stopping in the highway or in the street, loading and unloading. Thus, also, proper rules shall be established in order that travelers on foot may not suffer damages or inconveniences in the road.

ART. 113. That part of the highroad or street occupied by a tramway, or that part of the width which shall be determined, shall be kept in repair at the expense of the owner of the concession, who for this purpose shall renovate and replace the bed and the pavement with material of good quality whenever this may be necessary in the judgment of the expert agents charged with the inspection.

In the construction of the tramway, and in the preservation and repair, care shall be taken to introduce no modification whatsoever, either in the grade of the highroad or streets or in the transverse profile affected by them.

ART. 114. When the tramway is to be of a single track, turnouts conveniently situated shall be built, in order to avoid any blockade.

ART. 115. The works must be carried out in accordance with the approved plan, in which no modification whatsoever may be introduced without the approval of the Secretary of Public Works, or, in a proper case, of the Governor of the Province.

ART. 116. No tramway shall be placed at the disposal of the public until after inspection by the Engineers or expert agents of the Deputations or of the Municipal Councils, according to the circumstances. These officials shall report the result of their inspections to the Governor of the Province, and if the reports should be favorable, the Governor shall decide that the tramway be open to the public service, reporting to the Secretary of Public Works in all cases in which the concession may have been granted by that Department.

ART. 117. The company shall operate the tramway during the time stated in the concession, in accordance with the approved schedule of rates, which in no case shall be higher than those fixed therein.

The owner of the concession shall be obliged to assure the travel on his road, except in cases of force majeure. If the travel should be interrupted from causes imputable to the owner of the concession, the Department of Public Works, or the Deputation, or the Municipal Council which may have granted the concession, shall adopt the measures conducive to its reestablishment at the expense of the company.

ART. 118. The company may freely decide on the means of constructing the road as well as on the selection of the employees appointed for its operation and administration. In the same manner the necessary rules for the public service shall be drafted, notifying the Department of Public Works or the proper authority as the case may be.

In matters relating to public health and safety the company shall do what is demanded by the Government and the proper authorities, in conformity with the General Laws and Regulations and the special police laws of highroads and the Municipal ordinances of the towns through which the line passes.

ART. 119. At the expiration of the concession the company shall turn over to the proper party, in good serviceable condition, the tramway, its dependencies, material, and means of traction, and the Gov-

ernment, Deputations, or Municipal Councils, to whom the delivery is made, shall enter into the full enjoyment of the income earned by the operation of the tramway.

ART. 120. Besides the general conditions governing the concession of all tramways, other special conditions shall be stipulated which shall contain the provisions relating to the times in which the work should begin and end, the amount of the security, the schedule of rates allowable for the use of the works, duration of the concession, and cases of forfeiture (if any special ones are added besides those provided for by the general Law of Public Works and by the Railroad Laws), with everything else deemed convenient for the good construction of the road and of interest for the public service.

ART. 121. When the motive power employed for the traction is other than animal, it shall be stipulated in the general conditions that the engines, should they be run by steam, shall not produce smoke, nor any special noise which might frighten the horses of ordinary vehicles; that powerful brakes be used in order to stop the train in the shortest possible time; that the speed shall not exceed 20 kilometers per hour on the highroads, and that it shall be moderated until equal to that of a horse at a walk while within the towns, as well as where travel may be very active; that the best system of signals be adopted; and that, in short, there shall be observed all the rules and precautions possible, in order that ordinary traffic may be carried on without impediment and without danger, as well as to avoid accidents of any kind.

In no case shall the change of animal motive power established in a tramway to a different motive power be authorized without previous permission granted by the Secretary of Public Works, in accordance with the provisions of the Law in every respect and of the corresponding articles of these Regulations.

Madrid, May 24, 1878.

Approved by His Majesty.

C. TORENO.

GENERAL GOVERNMENT OF THE ISLAND OF CUBA.

PUBLIC WORKS.

The Colonial Department communicates to His Excellency the Governor-General, under date of June 28 last, the following Royal Order:

YOUR EXCELLENCY: In compliance with article 27 of the Budget Law for this Island, of the 5th of this month, His Majesty the King (whom God Preserve) has deemed proper to approve the provisional decree for the concession of railroads in the same, attached hereto. This I communicate to Your Excellency by Royal Order for your information and consequent effects.

And His Excellency having ordered its compliance on the 28th of July last, it is published in the *Gaceta Oficial* for general information.

Habana, August 10, 1880.

JOAQUIN CARBONELL,
Secretary of the General Government.

PROVISIONAL DECREE FOR THE CONCESSION OF RAILROADS IN THE ISLAND OF CUBA.

ART. 1. In compliance with article 27 of the Budget Law for the Island of Cuba of June 5, 1880, the Governor-General shall grant the concession for the construction and operation of the railroad lines preferred in said law and of any other ones granted in accordance with the same.

ART. 2. The general clauses, guaranties, subsidies, and franchises with which said concessions shall be granted shall be those stated in said law and in the General Law of Railroads and Police of the same, of November 23, 1877, and their respective Regulations of May 24, 1878, and September 8, of the same year, in so far as they do not conflict with article 27 of the Budget Law of Cuba aforementioned.

ART. 3. The concessions of all the lines shall be granted by means of an auction and for the period of ninety-nine years, at the expiration of which they shall pass to the ownership of the State.

The auctions for the lines enjoying, as an advance to be refunded during the entire period of the concession, an annual subsidy for every kilometer in operation, shall be held on the amount assigned to each line as subsidy, and it shall not exceed in any case $700 for each kilometer.

For the lines enjoying a guaranty of interest on the principal used in the construction, said interest shall be 8 per cent per annum, and the auction shall be held on the capital earning it.

For the lines without subsidy or guaranty of interest on the capital invested, the auction shall be held on the limit of time in which they are to be constructed.

ART. 4. The Inspection of Public Works of Cuba shall draft, within the maximum period of one month, the plan of the maximum schedules to be applied to all lines which may hereafter be granted in the Island, as well as that of the provisions which are to be observed in the collection of the amounts of these schedules, which shall also be common to all the lines.

This plan of schedules and of provisions for their application shall be briefly annotated by the Consulting Board of Public Works and afterwards by the Council of Administration of the Island, and the Governor-General shall approve the same, with the modifications which he may deem proper.

Subsequent changes shall be submitted to the Government.

ART. 5. The technical conditions of the plan of the construction of the subsidized lines shall be determined by the Inspection of Public Works. In consequence thereof, in view of the studies already made of some of the lines and of the date which can be procured for the rest, it shall fix the time table for each one of them, showing the towns and principal points through or in the vicinity of which the line is to pass, the minimum radius of the curves, the maximum grade of the levels, the class of the principal works of art which are to be of a permanent character, and the limits of time to be granted to commence the works, and to place each section of the line in operation. The gauge of the line shall be the standard one in the Railroads of Cuba, but in special and duly authorized cases it may be narrower. In the stations and switches which may be established for the meeting of trains, there shall be two tracks at least.

ART. 6. The Inspection of Public Works shall also propose for each line at the same time as the conditions stated in the preceding article the maximum limit of the subsidy to be refunded which it shall enjoy during the period of the concession and annually for each kilometer in operation, if this plan of subsidy is adopted.

In case the annual subsidy is preferred, the guaranty of interest on the capital invested in the construction, the Inspection shall determine the maximum capital per kilometer which is to be recognized as having a right to said guaranty and the cost of operation which, as the limit, is to be recognized to the concessionaire in order to estimate the profit he may make; but it being understood that if the real expenses of the operation are less than the maximum cost calculated, the former shall be the ones to be considered in order to determine the net proceeds of the operation.

ART. 7. The lines which do not enjoy a subsidy in either of the two manners stated are not subject to technical conditions of drafting and construction, nor to the maximum schedules.

ART. 8. The Inspection of Public Works shall draft the conditions for the concession of subsidized lines. Those for lines which are not subsidized may be presented by the companies or individuals.

ART. 9. After the conditions of a line are drafted, they shall be submitted for the report of the Consulting Board of Public Works and by the Council of Administration of the Island, and the Governor-General may approve them, notifying the Government thereof immediately.

ART. 10. After the conditions of construction of a line have been approved by the Governor-General or by the Government, according to the cases, the public auction for the award of the concession shall be advertised.

ART. 11. The auctions shall be held at Habana, being advertised at least three months beforehand. In order to take part therein it shall be necessary to deposit 1 per cent of the capital assigned to each line for the guaranty of interest. This deposit may be increased to 3 per cent of the said capital within the period of thirty days from the date on which the award is announced and it shall serve as a guaranty for the compliance of the conditions of the concession. The guaranty shall be returned to the concessionaire when by means of a certificate of the Inspecting Engineer it is proven that an amount equal to double the value of the former has been invested in works, the guaranty being then replaced by the works executed.

ART. 12. After the concession of a line has been awarded, the inspection of the public agents shall only take place in so far as is necessary to secure the compliance of said conditions and in regard to the public safety, the operation being permitted when the line or its sections fulfill their conditions, without prejudice to said works being terminated and the rolling stock completed within reasonable limits of time.

ART. 13. The Governor-General shall report to the Government all the vicissitudes and progress which each line may encounter.

ART. 14. The Treasury of the Island shall credit to the concessionnaire of the lines which enjoy an annual kilometric subsidy the amount due half yearly for the kilometers operated, the earning of the subsidy for each section commencing from the first day of the half year following the opening of each one. From this amount there shall be deducted, in accordance with law, 50 per cent of the gross proceeds earned during the half year by the section operated, and the difference shall be the amount paid to the concessionnaire of each line as refundable subsidy.

When, during four consecutive half years, 50 per cent of the gross proceeds of a line exceeds or equals the subsidy, the concessionnaire shall lose all his right to a further subsidy, but the Treasury shall continue to collect the excess of the 50 per cent over the amount of the subsidy until it has recovered the payments which it may have made

for this purpose in previous half years, without making any charges whatsoever of interest for the advance.

ART. 15. For lines enjoying a guaranty of interest, the latter shall be applied to the capital or to the cost per kilometer obtained at the auction, or to the number of kilometers operated in each complete half year. From the amount of the half-yearly interest thus obtained there shall be deducted the net proceeds, viz, the difference between the gross proceeds and the expense of operation, determined by the second paragraph of article 6 of this decree. The difference between the interest for the half year and the net proceeds shall be what the Treasury of the Island shall pay to the respective concessionnaires.

When during four consecutive half years the net proceeds of the operation of a line computed in the manner above mentioned equal or exceed 8 per cent per annum on the capital which is to earn the same, the right to the guaranty of interest shall cease in the future; but the Treasury shall continue to collect 50 per cent of the excess over the said 8 per cent.

ART. 16. As long as the right to the collection of the subsidy or to the guaranty of interest exists for each line, the public administration shall exercise in the economic management of the enterprise the intervention necessary to ascertain the gross proceeds of the operation as well as to assure itself that the expenses of the same are not lower than those fixed for each line. There shall be understood by operating expenses only those caused by the surveillance, preservation and repairing of the line, its works, buildings and material, those of the personnel and rolling stock, operation, workshops and warehouses, those of the general management and other similar ones; but by no means the interest and amortization of loans, the increase in works or material, and all others which do not relate to the operation of the lines.

ART. 17. The Government shall not interfere in any manner whatsoever in the management of lines constructed without subsidy.

Madrid, June 28, 1880.

Approved by His Majesty:

SANCHEZ BUSTILLO.

A true copy:

CARBONELL.

ADDITION.

[Budget Law of June 5, 1880.]

PUBLIC WORKS.

ART. 27. The Government shall facilitate the construction of the Railroad system of the Island of Cuba, preferring the following lines:

Santa Clara to Sancti Spiritus.

Sancti Spiritus to San Luís de la Enramada, via Ciego de Avila, Puerto Principe, Victoria de las Tunas, Cauto Embarcadero, Bayamo, and Jiguaní.

Victoria de las Tunas to San Luís de la Enramada, via Holguin.
Bayamo to Manzanillo.
Puerto Principe to Santa Cruz del Sur.
San Miguel de Nuevitas to Zanja.
Holguin to Gibara.
Canoa to the Bay of Nipe.
El Cristo to Guaso.
Santa Catalina de Guaso to Sagua de Tánamo.

The concessions for the different sections of these lines must be awarded at a public auction, the basis therefor being the subsidy or the capital to be guaranteed by the State, according to the case, and by means of a bond, granting as a subsidy—

1. Exemption from import duties on the necessary material.

2. An annual payment of an amount not to exceed $2,700 per kilometer operated, by way of an advance, refundable with one-half of the gross proceeds of the operation or with a guaranty of interest on all or on a part of the capital invested in the line, sharing half of the dividends in the latter case, when the shareholders earn more than 8 per cent interest.

3. The gratuitous cession to the enterprises of lands owned by the State or towns which may be necessary for the construction and operation of the lines.

4. The right of condemnation by way of public utility and after indemnification for the private property indispensable for the construction and operation.

These concessions shall enjoy the franchises mentioned in Article 4 of the General Railroad Law of November 23, 1877.

The Government is hereby authorized to grant these concessions without requiring a plan previously approved, but subject to determined technical conditions of draft and construction and to a fixed itinerary; the two General Laws of November 23, 1877, and their corresponding Regulations being understood as applicable in so far as they do not conflict with the foregoing prescriptions.

Lines may be granted without the subsidy referred to in the second case of the second paragraph, and these lines shall enjoy the other franchises and rights mentioned in this Law. They shall also be awarded at a public auction, giving a bond, and the time within which the work is to be constructed shall be the basis for the bid, being awarded to the Company offering to do the work in the shortest time.

(*Gaceta*, July 1, 1880.)

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TRANSLATION.

REGULATIONS

FOR THE

EXECUTION OF THE POLICE LAW OF RAILROADS

OF THE

ISLAND OF CUBA.

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
September, 1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

REGULATIONS FOR THE EXECUTION OF THE POLICE LAW OF RAILROADS OF THE ISLAND OF CUBA.

CHAPTER I.

ARTICLE 1. The inspection and supervision of railroads, not only in their technical part but also in their business part, the direct intervention in the different branches of their operation, their police, and good administration, and everything that relates to the safety of persons and the development of material interests, appertains to the colonial department.

ART. 2. The purely technical or professional part shall be intrusted in each line to one or more engineers of the corps of roads, canals, and ports; the administrative and business part to the officers designated by the colonial department. Two inspections shall be created of both branches, which shall be independent of each other and both devoted to the best public service, with different obligations and duties. They may also be consolidated.

ART. 3. The organization, powers, and duties of the technical and administrative inspections shall conform to the provisions of the special regulations which may have been issued for the service of the same, or which may in the future be issued by the colonial department.

CHAPTER II.

THE ROAD AND ITS PRESERVATION.

ART. 4. The erection of dams, wells, and troughs at a distance of less than 20 meters on each side of the railroad is prohibited. This distance of 20 meters shall be measured from the lower lines of the walls of the embankments, from the upper line of the clearing, and from the outer edge of the trenches when the railroad is on a level. In the absence of these lines the distance of 20 meters shall be counted from a line parallel to the outer rail at a meter and a half from the same.

ART. 5. The farmers of the land adjoining the road shall incur the penalty provided for in article 24 of the law whenever, by reason of their plantings, works of cultivation, or in any other manner whatsoever they injure the inclosures or the supporting walls, the braces of the culverts, the abutments of the bridges, and other works of railroads.

ART. 6. Article 24 of the law shall be applied not only to the farmers who, in the work of cultivation and improvement of the fields adjoining the railroad, should throw in the trenches earth, manure, leaves, or any other material which might prevent the free course of water, but also to shepherds and ranchmen who, in the care, grazing, or driving of their cattle, cause the same damage.

ART. 7. The owners or lessors of lands adjoining railroads shall not—

1. Obstruct the free course of water proceeding from the railroad, by constructing ditches, roads, or bypaths, or by raising their embankments.

2. Cut trees within a zone of 20 meters on either side of the railroad without previous permission from the local authority and examination by the technical inspection.

3. Pull out roots or remove earth from the slopes or lands adjoining the roads, which may cause a caving in of the land, and directly or indirectly obstruct or embarrass traffic.

The works necessary for the repair of this damage shall be constructed at the expense of the offender without prejudice to the penalties which he may have incurred according to the foregoing articles.

ART. 8. The owners or drivers of vehicles, horses, or cattle, may not, even for the purpose of entering adjoining lands, or to leave them, cross railroads, except at the points fixed for that purpose. This prohibition also includes owners or drivers of carriages and shepherds or cattlemen who leave their horses or cattle free and graze them on the lands adjoining the railroads.

ART. 9. No sheds, covers, or movable stands shall be allowed in the zone of the railroads, even for the sale of food, if their owners have not previously obtained the proper permission from the competent authority.

ART. 10. Whosoever willfully or by omission or negligence shall damage or destroy, with his cattle or vehicles, the works or dependencies of railroads, such as parapets, copings or walls, kilometric posts, telegraph posts, wires and insulators, signal posts, signs, time-tables for the public, and the pipes and water deposit, shall incur the penalty mentioned in article 21 of the law.

Said article is also applicable to those who without proper authority shall cut or destroy trees planted in the zone fixed in article 4 on either side of the railroad.

ART. 11. Nobody shall construct dams or works, open canals for taking or leading waters, erect buildings, walls, culverts, or other works within the zone of 20 meters, measured in the manner stated in article 4, without previous authorization.

This zone of 20 meters shall be measured at stations from the inclosure or boundary which limits the land belonging to the station.

ART. 12. Petitions to construct or rebuild in railroad zones shall be

addressed to the mayors of the respective towns, stating therein the site, purpose, and details of the proposed work.

The mayor shall forward them immediately, with his report and the remarks he may consider proper, to the technical inspection, which, after an examination and hearing of the company, shall determine the distance between the road and the work, fixing the alignment and the precautions and technical conditions to be observed, which must be complied with in the construction.

It is obligatory for the persons interested to submit the plans of the work to the technical inspection, whenever it shall deem it convenient to examine the same.

ART. 13. If the technical inspection and the mayor agree as to the proposed constructions in the zones of the road, the latter shall immediately grant the permission requested.

Should they disagree, and the interested party object to the conditions proposed by the inspection, the proceedings shall be submitted to the governor of the province, who, after hearing the permanent committee of the provincial deputation, shall decide what he may consider proper.

In case any of the parties should be dissatisfied with his decision the colonial department shall decide finally, through the administrative channel, without further remedy.

ART. 14. After a report or communication from the technical inspection the mayor shall order the works which may have been constructed in the zone of the railroad without proper permission to be demolished as well as those constructed after the granting of the latter which do not fulfill the required conditions.

ART. 15. If the houses or other buildings erected in any part within the zone of easement of the railroad, measured in the manner prescribed by articles 4 to 11, and especially if the walls at the sides of the roads threaten to fall, the company shall at once inform the technical inspection, so that it may immediately proceed to the examination.

If the latter should show their bad condition or insecurity, the technical inspection shall inform the mayor, stating whether the ruin is or is not imminent, and whether the building is among those the wall of which must be moved back.

ART. 16. The prohibition imposed by article 3 of the law to erect within 3 meters distance from the railroad any other construction but a wall or fence includes a prohibition to open in the same doors, windows, or any other openings which may face the road.

ART. 17. The plans of works which cross the roads or impose an easement thereon, more or less directly, shall be submitted to the approval of the secretary of public works, who shall decide, after hearing the company, the engineer in chief of the technical inspection, and the governor of the province.

ART. 18. By all possible means the company shall insure—

1. The maintenance in good condition of the railroad and of all its appurtenances.

2. The care and service of the gates at grade crossings.

3. The supervision and proper working of the switches in the changes and crossings of the road and in the signals adopted, in daytime as well as at night.

4. The lighting of the stations and grade crossings, which the secretary of public works shall fix, from sunset until the last train has passed.

5. The lighting of the tunnels, which shall also be fixed by the government, and which shall be constantly lighted while the road is in operation.

ART. 19. For the more exact enforcement of the provisions of the foregoing article, there shall be at all the points considered necessary road keepers, switch tenders, and watchmen, day and night, in sufficient number to insure the safety of the trains and the success of the service.

During the time these employees are on duty they shall never leave their posts without express authority thereto from the chief on whom they depend, and not without having been previously substituted.

ART. 20. When, in the opinion of the department of public works, the means adopted by the company are insufficient to insure the safety of the service, it shall adopt, of its own accord, after hearing the company, the measures which in each case it may deem proper and which are required by the interests of the public.

ART. 21. The technical inspection, in accordance with the company, shall organize the service and police of the gates in the most convenient manner.

ART. 22. Whenever it is necessary for the maintenance of the works or for the safety of persons or merchandise to open outer ditches, erect defenses and trenches, or to undertake other works of the same character, the company shall proceed immediately to their construction, at the points fixed by the Government.

ART. 23. The chiefs of the divisions of railroads, when the concessionnaires or lessors within the period fixed do not repair the damages or do not have the works completed, shall, after an order from the general direction of public works, repair said damages or injuries or construct the work necessary under the administration system. The governor shall order the attachment of the funds of the neighboring stations to meet the payment of the said works or repairs. A receipt for the funds attached shall be issued to the station masters. These documents shall be afterwards exchanged for the verified accounts of expenses in the manner in which the works of the State are vouched for. If there be opposition to the seizure of the funds, aid shall be asked of the governor of the province, who shall furnish it, even if it be with the troops under his command.

ART. 24. The division of the line in kilometers, the grades, the radii and length of the curves, shall be fixed according to the provisions ordered by the secretary of public works. They should be, whenever possible, on the right of the road, and starting from Madrid, as a central point, to the coasts and frontiers.

CHAPTER III.

STATIONS.

ART. 25. Every station shall have on its principal façade an inscription stating its name, and a clock for the regulation of the service of the same and the movement of trains.

All of the clocks of the line shall be regulated daily by the time of the meridian of Madrid whenever the line connects with that court without a break; and should there be one, they shall be regulated by that of the most important station.

All the passages for pedestrians, vehicles, and horses shall also have signs, so that all the bureaus, offices, warehouses, workshops, and other dependencies of the company may be known.

ART. 26. Any ticket with changes or erasures shall be refused as worthless.

ART. 27. The railroad administration, to insure the safety of baggage, packages, and merchandise, shall issue to their owners, or to those in charge of the same who may represent the former, proper receipts, stating therein the number and kind of packages delivered, the transportation rate charged, and any other matters which may be considered necessary for the better carrying out of this service.

In these receipts the time according to the regulations within which the baggage, packages, or merchandise are to reach their destination must be stated.

ART. 28. In the most public places of each station the announcement of the office hours, the hours for the sale of tickets, as well as the time-tables and rates, shall be constantly on view.

ART. 29. All the stations shall have a superior chief, to whom all the other employees of the same shall be subordinate.

ART. 30. There shall be in the stations designated by the department of public works—

1. Departments for the officers of inspection and telegraph.

2. A depository, in the manner determined by the company, where lost articles belonging to travelers shall be securely taken care of.

3. A medicine chest, bandages, and other articles required in case of accidents.

ART. 31. It is incumbent on the governors of provinces to adopt all the proper measures for the best order and police of stations, the entry, movement, and stoppage in the yards of public and private conveyances used to transport passengers and merchandise; but their deci-

sions shall not be final until they have obtained the approval of the department of public works.

All privilege and favor of common carriers as to entry, movement, and stoppage in the neighborhood of the stations are prohibited.

CHAPTER IV.

MATERIAL EMPLOYED IN THE OPERATION.

ART. 32. The number of locomotives, tenders, and other vehicles to be used in the service shall be determined in the articles of conditions of the concession.

If for the best public service it should be necessary to increase this rolling stock, the department of public works, after hearing the company, shall take such action as may be proper to obtain the same.

ART. 33. The locomotives shall always be provided with the necessary apparatus to prevent all danger from fire, and shall never be used until after examination by the technical inspection.

When by reason of wear or any other cause a locomotive should have been withdrawn from use, it shall not again be employed, even after being repaired, without an examination by and express authority from the technical inspection.

ART. 34. The axles of locomotives, tenders, cars, and other rolling stock of the company shall be tilted, strong and compact, of smooth surface, without ridges or indentations, and perfectly adapted to the service to be rendered.

ART. 35. Never under any pretext whatsoever shall cast-iron wheels be used, but cast-steel wheels may be used. In freight trains, as well as in trains which travel at a slow rate of speed, wheels with forged tires may be used after authority from the Government.

ART. 36. All the companies shall enter in folioed registers the locomotives in use, stating the day they began service, the work done, the repairs or changes made, and the successive renewal of their different parts.

In these entries there shall also be included the observations and remarks deemed necessary to form the statistics of the rolling stock in use by the railroad.

ART. 37. In other special registers, different from those mentioned in the foregoing article, a full entry shall be made of the axles of the locomotives and tenders, entering at the margin the ordinal number of each one, the manufacturer thereof, the day they were first used, the tests to which they were submitted, their constant and periodic work, and the accidents and various repairs. For this purpose each axle shall have its number engraved thereon.

These registers, always kept with the greatest possible exactness, shall be presented by the companies to the engineers in charge of the technical inspection whenever they may deem it proper to examine them.

ART. 38. Only the persons employed for the purpose by the company shall fire locomotives.

When ready for use, one engineer or fireman shall constantly remain on the platform of the locomotive wherever it may be, on the main line as well as on the branches.

ART. 39. The tenders, besides the conditions of solidity and safety, shall have the necessary capacity to contain larger quantities of water and fuel than those which the accompanying locomotives can consume during the run from one deposit to another. They shall also have the room necessary to carry a box of such tools and implements as may be determined upon.

ART. 40. The cars to be used for the transportation of passengers shall not be used without the authorization of the technical inspection.

This authorization shall be granted when it is acknowledged, in the manner determined by the government, that they have all the requisites for the safety and comfort of the passengers.

ART. 41. The place assigned each passenger shall be at least 45 centimeters wide, 65 centimeters long, and 1 meter 45 centimeters high, measured from the seat.

In the interior of all passenger cars there shall be a sign, stating not only the number and letter of the car according to its class, but also the number of its seats, the divisions being clearly made, as well as a frame containing such part of these regulations as relates to passengers.

ART. 42. All the locomotives, tenders, and cars of a train shall have—

1. The name or initials of the railroad to which they belong.
2. Their ordinal numbers.
3. If they be passenger cars, the class to which they belong.

ART. 43. The company shall constantly keep in good condition the rolling stock, in proportion to the extent and special needs of the line.

ART. 44. The administration shall have exclusive jurisdiction of all appeals which may be brought against the decisions of the technical inspection, the object of which should be to abandon that part of the stock which is useless, to order necessary repairs, and to adopt such measures as may be required for the good order and safety of the service.

CHAPTER V.

FORMATION OF TRAINS.

ART. 45. The department of public works, at the suggestion of the company, shall determine for the different points of the line, and as circumstances may require:

1. The speed.
2. The maximum number of cars.
3. The maximum of weight to be carried in freight trains.
4. The number and weight of the cars with brakes, and the place they are to occupy in the train, the last car in a train being necessarily of this class.

ART. 46. Every engineer running an engine shall have the necessary means to make the signals prescribed by the regulations.

ART. 47. The number of passenger coaches of each train shall be in accordance with the regulations governing the running of the same. Nevertheless, all necessary trains shall be run so as to enable all those who desire to travel to do so.

If the company should be authorized to make use of two tracks, the maximum number of coaches which each passenger train may have shall be 24.

For this purpose there shall be established at different points of the line depots of cars, the trains being completed with these cars when the number of passengers and the best public service demand it.

ART. 48. Locomotives shall always be at the heads of trains. Nevertheless, this order may be changed, if convenient, in order to facilitate and render safer the necessary movements in the vicinity of stations and in cases of aid, in which cases the speed shall not exceed 25 kilometers per hour.

ART. 49. In placing the cars forming passenger and mixed trains there shall be observed the provisions which have been issued or which may hereafter be issued on the subject by the Department of Public Works, on the recommendation of the company.

ART. 50. Only in accordance with the instructions issued by the department of public works, and under the conditions it may deem proper, may the cars of common carriers form part of trains.

ART. 51. The carrying in passenger cars of all materials which may cause explosions or fires is prohibited.

ART. 52. The coaches and cars which make up a train shall have the buffers at the same height, and the centers of these at equal distances, so that they may constantly be in contact without being forced.

ART. 53. The coupling pins as well as the brakes shall always be kept perfectly clean and oiled.

ART. 54. Every train shall be drawn by a single engine, except in cases of aid on account of damage or other serious reasons, when another engine may be employed, as well as in the cases where the company may have been previously authorized thereto by the Government.

ART. 55. More than two fired locomotives shall never be placed in a passenger train, and as a general rule they both shall be placed at the head of the train, although in special cases, and always with the authorization of the Department of Public Works, a different disposition may be made. At the head and following the tenders there shall be one or two cars which do not carry passengers, according to whether one or two locomotives are attached.

At the end of the train another car, without passengers, shall always be placed, unless the company is authorized by the Government to leave out the end car. In passenger trains there shall always be a car with a water-closet.

ART. 56. In a special register the causes which may have occasioned the employment of two engines in the same train shall be stated whenever the company is not authorized to do so, also stating the time thus employed and the reasons justifying it.

Those charged with the surveillance of the service may examine these reasons and other memoranda referring to it whenever it is required by the best public service.

ART. 57. In due time and after full inspection the engineer shall satisfy himself that the locomotive and tenders intrusted to him are in good serviceable condition and are provided with the necessary spare parts.

ART. 58. The chiefs of trains, immediately on receiving them, shall examine them with the greatest care in order to assure themselves that they are ready for service.

ART. 59. When there is insufficient freight in the car of the chief of the train it shall be filled with ballast up to the weight of 2,000 kilograms.

ART. 60. The chief of the train, the brakemen, and the engineer shall be, as far as practicable, in communication during the run, so as to be able to give a signal of alarm in case of accident.

ART. 61. Trains in motion shall carry the lights and signals mentioned in the regulations of August 8, 1872, or in the regulations which may in the future be issued by the department of public works, after hearing the companies.

ART. 62. The passenger cars shall be lighted inside at night, and also during the day when going through the tunnels, determined by the Government, all preparations being made for that purpose in the nearest station, according to the run.

ART. 63. Before a train starts, the employees who are to go with it shall punctually occupy their proper places, and in due time the station master shall give the signal which informs them to take their places, the engineer finally repeating it with a whistle.

ART. 64. At such points of the line as the department of public works may designate, after hearing the company, there shall be locomotives for aid or in reserve, always fired and ready for service, by day as well as by night.

ART. 65. Special regulations drawn up by the Government, after hearing the companies, shall determine the service of the locomotives specially devoted to aid, without loss of time, for trains delayed, or in difficulties, or for any reason whatsoever.

At the point in the station where the auxiliary locomotives are placed there shall always be a repair car with the tools and outfit, which, in the opinion of the Government, may be considered necessary. The trains which may be used for the speedy aid of passengers and trains in cases of accidents shall also have a repair car.

CHAPTER VI.

PROVISIONS RELATING TO RUNS AND STOPPAGES AT INTERMEDIATE STATIONS AND ARRIVALS OF TRAINS.

ART. 66. At the request of the companies, the department of public works shall determine the running of the trains and of single engines on double-track roads, as well as the turn-outs in single-track roads.

ART. 67. No train shall start from the station before the hour designated in the time-table.

ART. 68. The existing provisions, or those which may hereafter be issued by the department of public works, shall be enforced as to the time which must elapse between the starting of a train to the next one which must follow according to the schedule.

In the time between two trains no other trains or single engines shall be allowed to leave, except in cases of aid and succor, or when the company is authorized thereto by the Government.

ART. 69. In the vicinity of stations signals shall be placed which shall immediately inform the engineers whether or not they may bring their locomotives into the station.

The engineer shall stop the train as soon as he observes the signal to do so.

ART. 70. Only in cases of accident or force majeure, or repair of the line, shall trains stop on the main line.

ART. 71. The existing provisions or those hereafter adopted by the department of public works shall be enforced, after hearing the companies, in order to determine—

1. The special measures of precaution and safety which may be deemed necessary for the running of trains on up or down grades, tunnels, and curves.

2. The highest speed of passenger and freight trains on the different sections of the line.

3. The time to be employed in making runs.

4. The precautions which should be adopted for the dispatch and running of special trains.

ART. 72. When a company decides to run a special train, it shall advise the inspections, stating the reason for the run and the hour of departure, the company being liable for any accident which may occur.

The departure of these special trains shall always be announced by telegraph to all the stations.

ART. 73. Whenever, for any reason whatsoever, trains or single engines stop on lines, signals indicating it shall be placed 800 meters on either side of this point.

ART. 74. The signal system shall conform to the provisions of the regulations in force, or those which may hereafter be issued by the department of public works, after hearing the companies.

ART. 75. At a distance of 500 meters from a crossing with another railroad or tramway the engineer shall slow up, so that he may come to a full stop before reaching that point if the circumstances require it.

ART. 76. The department of public works, after hearing the company, shall designate the points where signals are to be placed, showing the direction in which switches are turned.

ART. 77. When the trains approach stations where they must stop, the engineer shall moderate the speed at such a distance as he may deem necessary, so that it shall not pass the station platform where the passengers are to alight.

He may also, according to circumstances, stop the locomotive before reaching said point, afterwards reaching it by running it again.

ART. 78. The engineer shall slow up not only in large cuts where there are curves, but also at other points of the line which do not permit a large surface of the road to be seen.

ART. 79. When, because of unavoidable accidents, the locomotive runs with the tenders ahead, whether alone or with the train, the engineer shall take the greatest precautions, the speed in such cases not exceeding 30 kilometers per hour.

ART. 80. When the engineer approaches stations, grade crossings, curves, cuts, or tunnels, he shall sound the steam whistle to announce the approach of the train.

The same signal shall always be repeated when there is doubt as to whether the line is completely clear.

ART. 81. On the arrival of trains at stations their names and the time of the stop shall be repeatedly and loudly announced.

ART. 82. While the trains remain in the stations they shall be in charge of the station master, who shall during that time be responsible for whatever happens in his station.

ART. 83. The chief of the train in motion is the chief of all the employees thereon, including the engineer and fireman.

ART. 84. When two locomotives draw the same train, the person who has charge of the first one shall regulate the speed.

The second locomotive shall act only as an additional force, and as a mere auxiliary.

ART. 85. The engineer who runs a locomotive without a train shall always do so on his own responsibility, and the fireman shall obey the signals ordered by the former in accordance with the regulations.

ART. 86. The engineer and fireman in charge of the service shall be the only persons on the locomotive.

From this prohibition are excepted only the engineers in charge of the technical inspection, their assistants who have an order or authorization of their chief, and the agents of the company duly authorized for the purpose.

In every case special care shall be taken that the number of persons shall never be in the way of the handling and best service of the engine.

ART. 87. The secretary of public works shall designate the stations in which records of the delays of trains shall be kept, as determined by each company. In these records the nature and make-up of the trains shall be stated, the numbers of the locomotives drawing them, the hours of their departure and arrival, and the causes and duration of the delays.

The agents in charge of the inspections may examine these records whenever they deem it advisable, for the better fulfillment of these duties.

ART. 88. By the quickest and most expeditious means at their disposal the chiefs of trains in motion shall advise the master of the next station of any accident which may occur, who shall immediately communicate the same to the inspections in charge of the surveillance of the line, and, in a proper case, to the superior authority of the locality.

ART. 89. The urgent measures adopted by the respective governors on the recommendation of the inspections, and referring to the safety of the trains, shall be obligatory for the companies when said measures shall have been communicated to their directors.

ART. 90. Thirty days before the date on which it is to go into operation a sufficient number of copies of the schedule of all trains shall be sent to the chiefs of the technical and administrative inspections, who, with their report, shall forward them to the general direction of public works, commerce, and mines, within the next ten days, for its approval, or in order that it may make the changes it may deem proper.

ART. 91. Before approving a new schedule of trains for a line the railroad companies which are affected thereby must agree, and the consent of the department of the interior must be previously obtained in all that refers to the service of the trains which are to carry public mails.

ART. 92. If the department of public works, after receiving the schedule of these trains, shall allow the thirty days designated in article 90 to elapse without giving any answer whatsoever to the companies, the latter shall put it in force, considering it approved.

ART. 93. When a new system in the service of the railroad is adopted, or the one established is partly changed, the public shall be notified at least eight days in advance not only as to the hours of departure of the trains and of their arrival at the stations, but also of the points at which they are to stop.

CHAPTER VII.

PROVISIONS RELATING TO PASSENGERS AND TO PERSONS NOT IN THE RAILROAD SERVICE.

ART. 94. Admittance into the inclosures of railroads is generally prohibited to all persons not employed in the service.

From this provision are excepted—

1. The superior authorities of a province.

2. The local authorities.

3. The engineer and other employees charged with the surveillance of the railroad.

4. Soldiers and customs officers and police agents, when they appear with the express permission of the competent authority, in order to perform some service.

5. Persons who obtain permission from the companies.

ART. 95. The passenger who does not present the ticket entitling him to occupy a seat in trains, or, having one of a lower class occupies one of a higher class, shall in the first case pay double fare, according to the schedule of rates, and in the second case twice the difference between fares computed from the station at which he entered the train to his destination.

If the passenger does not prove where he entered the train, the double fare shall be computed by the distance from the place where the last examination of tickets was made.

ART. 96. In case a passenger goes beyond the place indicated in his ticket, he shall only pay the excess corresponding to the greater distance traveled, provided he informs the chief of the train before starting from the station stated in his ticket.

If this notice shall not have been previously given, he shall pay double the amount of the excess of the distance which he may have traveled without a ticket.

ART. 97. The passenger, who on account of the lack of coaches, should be obliged to go into one of a higher class than the one to which he is entitled by his ticket, shall pay nothing to the company on account of the higher fare.

If, on the contrary, he should be obliged to occupy a seat of a lower class, the company shall refund to him the amount of his ticket as soon as his trip ends.

ART. 93. It is absolutely prohibited—

1. To enter or leave the cars by any other exit than that opening onto the platforms.

2. To pass from one car to another or to lean out of the car while it is in motion.

3. To enter or leave cars except at stations and when the train shall have come to a full stop.

4. To board cars while the train is in motion.

5. To admit into cars more passengers than can be furnished with seats.

ART. 99. No intoxicated person shall be permitted to enter cars, nor any one carrying loaded firearms, or packages which, on account of their shape, size, or bad odor, may inconvenience the passengers.

Nor shall any person with a firearm be allowed on the platform without first proving that it is not loaded.

ART. 100. Passengers have a right to compel the ejection from the car, by the employees of the company or of the Government, of anyone

misbehaving, or who, by word or action, is offensive, or shall interfere with the order established, or cause disturbances or quarrels, as well as those who smoke in a car not reserved for smokers.

ART. 101. The companies shall always reserve one or more first-class sections in passenger trains for ladies who, traveling alone, may request it, and another section in which smoking shall be allowed.

These sections shall be designated by signs stating their purpose.

ART. 102. Dogs are not allowed in passenger coaches; nevertheless, the company may admit, in special cars, persons who do not desire to part from their dogs, provided the latter are muzzled.

ART. 103. If any passenger violates the provisions of these regulations the agent of the administrative inspection, or, in his absence, the station masters or train chiefs, shall warn him in due season, and, when the gravity of the case requires it, institute the proper investigation in order to establish the facts.

ART. 104. In order that the passengers may make their claims, not only against the company, but also against its agents and employees, there shall be in each station a registry, which shall be inspected every month by those in charge of the administrative and business inspection.

CHAPTER VIII.

RECEIPT, TRANSPORTATION, AND DELIVERY OF BAGGAGE AND MERCHANDISE.

ART. 105. The objects which are transported by railroads are classified, for the purposes of these regulations, as follows:

1. Baggage.
2. Parcels.
3. Merchandise.
4. Cattle of all kinds.

ART. 106. By baggage is understood clothing or articles for immediate use destined to the shelter, ornament, or cleanliness of passengers, books or tools of trade or profession, contained in trunks, chests, valises, boxes, hatboxes, satchels, saddlebags, hand bags, pillows, or under any covering whatsoever, or unpacked.

ART. 107. Baggage shall be transported in the same trains which carry its owners, and shall be delivered to them at the end of the trip.

ART. 108. By parcels are understood all packages which, without being subject to a declaration of contents, require special care and are transported with the same speed as passengers.

ART. 109. All articles which are not included in the classification of the foregoing articles are designated under the general name of merchandise.

ART. 110. The fourth classification comprises cattle, hogs, sheep, and goats; draft, burden, and saddle animals; dogs and other domestic animals, and domestic and pet birds in cages or crates.

ART. 111. Whosoever sends merchandise to railroad stations shall make a previous declaration as to the number of packages, weight, class, and quality.

Special precautionary measures shall be adopted for the transportation of such merchandise as may cause explosions or fires, or the deterioration or contact of which may damage other merchandise more or less.

ART. 112. Every delivery made in the place designated for the proper employees of the company to receive articles to be transported shall be considered as a proper delivery and legally made.

The subordinate employees exclusively engaged in manual labor and the mechanical laborers in the offices and stations shall not be considered such employees.

ART. 113. The companies shall be obliged to invoice parcels brought to them.

In order that this may always be properly done, the companies shall keep two numbered stub books; one in which the articles to be transported with the same speed as passengers shall be entered, and the other in which to make a record of the goods to be carried in freight trains.

In both the weight and the rate of transportation of the articles shall be stated in the same order of dates as they are entered in the registry, unless the sender voluntarily consents to waive this privilege.

At the time of delivery a receipt shall be given the sender or the person in charge of the article, in which the number, class, weight, rate of transportation, and time within which it is to be delivered shall be stated.

ART. 114. The liability of the company as to delivery to which the previous article refers commences from the moment in which the company has taken charge of the merchandise, in the place where it is to be received, even though the person in charge of this service may not have entered it in the books of the registry.

ART. 115. The government, in accordance with the companies, and after calling for the information it may deem convenient, shall designate the stations where tickets for passengers are to be sold and merchandise billed to all the points connected with the railroads, even when these points belong to other companies, as for the purposes of transportation all are to be considered as one line, and for such cases the royal order of the treasury department of January 10, 1863, shall be enforced and considered as forming a part of these regulations.

ART. 116. A passenger carrying in his baggage jewels, precious stones, bank notes, money, stock of industrial companies, bonds of the national debt, or other valuables shall state it, exhibiting them before the record is made, declaring the total amount represented by these articles, either with regard to their selling price or the price at which he estimates them.

Failure to comply with this requisite shall relieve the company of all liability in case of theft or loss.

ART. 117. When the company, suspicious of the correctness of the declaration of the contents of a parcel, decides to examine the same, it shall proceed to do so before witnesses and in the presence of the sender or of the consignee. If the latter, invited by the company, are not present at the time, they shall be cited for that purpose by a notary public, who shall be requested to do so by an express mandate from the competent authority. If even then they should not appear, the parcel shall be opened in the presence of the notary and the witnesses.

A proper report shall be drafted of the examination and its result, signed by all those present and by the notary, should the latter be present. The place and date of the examination shall be set forth therein, the notice given to the sender or to the consignee, his presence or refusal to attend, the kind of merchandise, its condition and number of packages, the details according to the declaration, and everything which may appear and be shown in the examination at the time the parcel containing it is opened; the names, residence, profession, or business of the witnesses.

ART. 118. After the report of the examination has been drafted, according to the provisions of the preceding article, the company shall send it to the governor of the province so that the proper steps may be taken by the government without prejudice to the right of sending it also to the court of competent jurisdiction in case of a civil or criminal action.

ART. 119. The company can not delay the time designated for forwarding the parcels agreed to with the shippers, not even giving as an excuse the examination of the parcels, on account of suspicion of fraud or for any other reason, if the examination could have taken place at the point of delivery.

If the examination shows that the shipper has not made a false declaration, the company shall pay all the expenses of again closing the parcels and putting them in their original condition.

ART. 120. Whosoever shall make a false declaration when shipping merchandise to the stations in order to pay a lower rate than that of the schedule, shall at once pay the company twice the excess and shall indemnify it for all damages and losses.

ART. 121. When the company shall receive articles under a sealed cover, it shall be exempt from all liability when delivering them with the seals intact and in their original shape to the shipper or to the consignee.

ART. 122. If cash payment is not made in advance for the transportation charges as per schedule, the companies may refuse to carry empty cases, as well as merchandise which may be damaged, or that requiring additional cover to preserve it, and finally that which, on account of its small value, will not cover the cost of transportation.

ART. 123. The companies have the right to refuse parcels badly made up, and all those not sufficiently packed so as to preserve the merchandise they contain.

Nevertheless, if the sender should insist that they be admitted, the company shall be obliged to forward them, but shall be exempted from all liability if it records its opposition, according to existing provisions, in the receipt issued.

ART. 124. When the receipt or voucher given the interested parties by the company does not state the opposition to receive the merchandise to which the preceding article refers, it shall be liable for the damages appearing at the time of delivery at the point of destination; but even in this case it may evade the liability if it proves that the damages can not be ascribed to it.

ART. 125. Animals, merchandise, or any other articles to be transported at great speed shall leave in the first train which includes cars of all kinds, provided that they have been presented for record three hours before the time of departure of said train. They shall be at the disposal of the persons to whom they are addressed two hours after the arrival of the train.

If there be no trains with cars of all kinds which run to the place of destination, they shall be transported in the first one leaving, whether it be an express or mail train.

When the transportation is to be made at slow speed, they shall be forwarded forty-eight hours at the latest after the entry of the articles, which shall be at the disposal of the consignees twenty-four hours after the arrival of the train. For the transportation of draft and saddle animals, the number of hours' notice shall be given provided for by the schedules.

ART. 126. The shipping papers delivered by the company to the conductors of freight trains shall serve as evidence in favor of the owners who may have lost their receipt, provided they are identified.

ART. 127. The regular schedule rates are applicable to all packages or parcels which, although packed separately, constitute a remittance of more than 50 kilograms, provided it is made by one individual and addressed to a single person.

The parcels and excess of baggage, under similar conditions, shall be considered as a single remittance for the collection of the rates fixed by the special schedule.

The express companies and other carriers shall not enjoy these benefits unless the articles forwarded by them are packed in a single parcel.

ART. 128. Transportation charges on merchandise, animals, and other articles not included in the schedule may be included in the class to which they are most similar, which classifications may be made temporarily by the company itself, but always submitting the same immediately to the department of public works, which may change, admit, or refuse them, as it may deem best.

ART. 129. Whenever a parcel contains merchandise of different classes which, according to the schedule, pay a different rate of transportation, the one to be charged shall be that for the highest class.

ART. 130. The companies may establish, within the maximum schedules which they may have been permitted to establish and without damage to the national ports and manufactures, other special rates in favor of foreigners between given points on the line; but the privilege to enjoy these rates shall not extend to transportation between other points.

ART. 131. The companies may reduce the schedule rates in favor of shippers who accept a longer time for delivery than those fixed for slow speed, and of those who obligate themselves to forward a minimum number of tons, or those who offer any advantages for the transportation; but in no case may the companies evade the liability imposed on them by these regulations for bad service.

ART. 132. Any special reduction or condition granted in favor of one or more shippers shall be extended to all those demanding it, if they comply with identical conditions.

ART. 133. Whenever a company grants to one or more shippers a reduction of the schedule rates, the company shall inform the Government of the conditions under which it has been made.

The companies shall open a register in which these conditions shall be recorded, which shall be shown to the persons who may request it. The registers shall be folioed and rubricated by the chief of the business inspection.

ART. 134. When there are special schedules for the transportation of certain merchandise, notice shall be given the shippers at the time it is invoiced, so that they may select the one most advantageous.

ART. 135. All changes in the schedule rates shall be communicated to the Government one month in advance of the date they are to be published, and shall be brought to the knowledge of the governors of the provinces traversed by the railroad, who shall order their publication fifteen days before the new schedule is to become operative.

ART. 136. The rates fixed for the transportation of merchandise, by virtue of special schedules, can not be increased until after the expiration of one year from the time of their publication.

ART. 137. The delay in transportation shall give right to indemnity for damages, except in cases of force majeure.

ART. 138. The burden of proof in cases of force majeure is on the company; and until the company shall have proved it, its liability shall stand.

ART. 139. Robbery shall not be considered a case of force majeure, except when the company proves that it did everything in its power to prevent it; nor fire, unless it be proved that it was not due to the negligence or carelessness of the employees, nor to the insufficiency or bad condition of the means of transportation.

ART. 140. The railroad companies having terminals at the frontier

or at maritime ports, provided they comply with the formalities and conditions prescribed by the custom-houses, may use instead of a baggage depot for the examination of baggage, the trains on which it is carried.

ART. 141. The company which may have carried merchandise, without giving rise to any claims whatever, shall have a right of action against the consignees or the shippers for the cost of transportation and custody of the merchanise kept in good condition.

In default of payment proceedings shall be instituted in accordance with the commercial code.

ART. 142. The consignee shall pay the expenses of repacking whenever the company shall prove that it was unpacked to preserve the merchandise, which would otherwise have decayed or been lost.

ART. 143. Every action the object of which is purely commercial against the company and in regard to transportation shall be brought in the courts.

ART. 144. The provisions of law which submit to verification the weights and measures of merchants and manufacturers in their warehouses, stores, and shops open to the public are applicable to railroad companies in all matters referring to transportation.

ART. 145. The companies shall always be liable for the loss and damage of articles intrusted to their care, whether the damage is due to their own employees or to strangers who may frequent their offices.

ART. 146. If the company leases the whole space in one of the cars of its trains, and does not directly or indirectly interfere in the handling of the freight, it shall not be liable for the loss and damage which may occur, being exempt from all responsibility.

ART. 147. In case of loss or damage of the effects transported, the company first charged with their handling can not make a claim against the others who were charged with the transportation, unless it prove that the merchandise was delivered to them in good condition. All the railroad companies are considered to be connected without a break, as if they were in a single line, for the purpose of transportation contracts.

ART. 148. The companies are not responsible for the natural wear and tear on the merchandise when it is not greater than ordinary and when it can not be attributed to fraud or carelessness.

ART. 149. In case the merchandise does not arrive at its destination in good condition and at the stated time the owner or consignee has the right to insist on the liability of the company which may have failed to carry out these conditions.

In the same way it may be insisted on when the parcels, clearly and distinctly marked so that no doubt can arise, are delivered to a person different from the one who was to receive them.

ART. 150. Unjustifiable delay of passenger trains shall always be punished by fine, in accordance with article 12 of the law of November 23, 1877, when the delay shall exceed ten minutes for every 100 kilo-

meters for express and mail trains, and twenty minutes for the same distance in case of mixed trains shall also be punished by fine, without prejudice to their civil liability, when in the freight service the loss or damage in handling the merchandise is due to abandonment or carelessness and when the delays exceed from one-fourth to double the time provided for in the regulations or agreed upon for the delivery.

ART. 151. If only part of the merchandise is delivered by the company within the time provided for by these regulations, the other part shall be the basis for claim for loss and damages; but the latter shall cover both when the consignee shall prove the impossibility of using one without the other.

Exceptions are made in cases of accident and of force majeure, which must be proved on the same day and place on which they may occur, and not by certificates obtained subsequently, and after the proceedings have been begun, unless a disturbance of public order may have prevented the authorities from freely performing their duties.

ART. 152. If the owner of parcels or packages temporarily mislaid shall have been indemnified for their loss, the company may, when the parcels are found, cite the owner to be present at the opening; and after the delivery is made the company shall recover the amount it paid, making allowance for the damage due to the delay.

If from the investigation of the articles fraud shall appear to have been committed in the declarations made by the owner, the company shall, in its turn, have a right to claim damages, giving information of the fraud to the courts of justice.

ART. 153. The companies may establish ordinary transportation services in order to facilitate communication between towns and the neighboring stations.

The interested parties shall nevertheless be at liberty to carry the goods in their own vehicles or send them by trustworthy persons should they prefer it, but in such case, when the parcels are delivered to the stations, this fact must be stated.

The companies shall then advise the consignee of the arrival of the trains within the period fixed in article 125, so that he may send for the merchandise belonging to him.

After the forty-eight hours allowed for such purpose have elapsed, if he does not remove the merchandise from the station, storage shall be charged from that time.

ART. 154. The companies may also establish schedules in combination with other land or maritime transportation companies, with the condition that on its lines the same rates shall be charged as when the articles are sent to the points favored by the schedule, even though the shippers, at their own expense, shall transport the merchandise by land or water, employing their own vehicles or vessels.

ART. 155. The consignee of merchandise can not refuse to receive it, even on a holiday, if he be in his house when the merchandise is delivered there.

ART. 156. The consignee who may desire to verify the weight of the merchandise delivered to him shall pay the expenses of reweighing, provided that the result shall be the weight stated in the receipt, as provided for by article 148. If they do not agree, the expense shall be defrayed by the company.

ART. 157. The examination of the parcels shall be made judicially when the consignee so demands it.

The experts called for this purpose shall state in their report the outward condition of the parcels, their weight, marks, and numbers, the nature and amount of the merchandise therein contained, their quality, whether they have been wet or suffered any other damage, the time when, in their judgment, the damage occurred, the probable cause thereof, and finally the amount of the damage.

ART. 158. The receipt for the articles transported, issued by the consignee, and the payment of the transportation shall extinguish all right of action against the carrier.

ART. 159. The claims against the companies for loss or damage of articles transported shall be brought in the manner and time prescribed by the commercial code.

CHAPTER IX.

PROCEDURE FOR THE PUNISHMENT OF CRIMES AND OFFENSES AGAINST THE SAFETY AND PRESERVATION OF RAILROADS.

ART. 160. The Governors of the provinces crossed by railroads shall:

1. See that, fully exercising all their powers and with constant supervision, the mayors carry out the provisions of the law of November 23, 1877, and of these regulations, in so far as they come under their jurisdiction.

2. Impose fines for the offenses stated in article 12 of the law on complaint of the inspections.

ART. 161. The ordinary tribunals shall have jurisdiction of the crimes committed on railroads, according to the procedure and provisions of the law of November 23, 1877, and the royal orders which have been issued for such cases.

ART. 162. The supervision of the railroads shall be mainly exercised by the officers of inspection and the companies' employees, both having for this purpose the character of sworn guards.

ART. 163. According to titles 2, 3, and 4 of the law of November 23, 1877, and the provisions of these regulations, any violation of these articles shall be denounced to the municipal judges of the jurisdiction where they may be committed by the employees of the inspection, as well as by those of the company.

ART. 164. The denunciation authorized by the title and signature of the complainant shall be made in duplicate, declaring therein the place

where the act denounced occurred, its date, the date of the complaint, the name and description of the offender, and his residence and domicile, if they be known.

On one of the two copies of the denunciation the judge shall acknowledge receipt thereof and return it to the complainant, keeping the other as the origin and basis of the subsequent proceedings.

ART. 165. Immediately after hearing the interested parties, the judge shall enforce this law and these regulations, imposing the fines in a proper case, collecting them as soon as possible.

The trial being ended and the sentence executed, the judge shall inform the inspections of the line of the result of the proceedings.

ART. 166. The offenses committed by the concessionnaires or lessors in the cases mentioned in article 12 of this law, shall be punished by the governors on official complaint of the inspections, who shall specify them as clearly as possible, and classify them according to their importance and consequences.

ART. 167. The governor, after hearing the concessionnaires or lessors of the railroads and the permanent committee of the provincial deputation, shall impose upon them the penalty they may have incurred according to the law of November 23, 1877, should they be guilty, in his judgment. If the concessionnaires or lessors seek the remittance of their fines, they shall petition the department of public works, through the governor who imposed them, who shall forward said petitions with his own report for the proper decision. The decision shall always state the reasons after hearing the officials or corporations deemed proper, that of the full council of state being indispensable. From the decision of the department there shall be no appeal.

ART. 168. The authors of the crimes or offenses mentioned in the railroad police law shall be turned over to the competent court either by the employees of the inspections, or of the company, or by any other authority giving mutual assistance in order to fulfill their duty.

CHAPTER X.

MISCELLANEOUS PROVISIONS.

ART. 169. The concessionnaires or lessors may freely appoint and discharge their employees, but the department of public works, by virtue of the authority of article 15 of the police law and in the cases mentioned therein, may order the company to discharge any of its employees, communicating the order through the chief inspectors, who shall see that the employees are immediately discharged without any appeal.

Discharge from the service may take place—

1. When the reports of chiefs of divisions with regard to the technical employees show that these are incompetent or that they have placed or may place the safety of trains in jeopardy.

2. When the reports of inspecting chiefs of administration as to any employee of the company show that his remaining in the employ is dangerous either to the security of the trains or the maintenance of public order.

Nevertheless, in the latter case the discharge can not be directed nor complaints admitted at the time of elections or thirty days thereafter.

ART. 170. Railroad employees shall wear a uniform differing according to their class and the road to which they belong.

ART. 171. Road guards and gate keepers may bear the same arms and enjoy the same privileges as Government guards.

ART. 172. No engineer shall be employed in the railroad service without previously showing, in accordance with the instructions issued by the department of public works, the necessary qualifications for the faithful discharge of his duties.

ART. 173. Notice shall be given immediately by the station masters to the inspections and to the governors of any accident which may place in jeopardy the safety of the trains or endanger the passengers or employees of the company or any other persons.

ART. 174. If experience shows that besides the ordinary water and fuel deposits existing for the use of the engines other intermediate deposits at distinct points of the road are necessary, they shall be constructed at the places designated by the government, after hearing the companies and the technical inspections.

ART. 175. The special regulations for the service and operation of each line shall be submitted by the concessionaires to the approval of the government.

ART. 176. The written, printed, or lithographed instructions, orders, circulars, and provisions relating to the railroad service shall be immediately communicated to the inspections.

The manuscript orders shall be copied the day they are issued in a special register, which shall be presented to the inspections whenever demanded.

ART. 177. The chief inspectors shall have the right to examine the accounts of the companies' receipts and expenditures, the royal decrees received by the companies, and any other documents relating to the operation of the road and by which its real condition may be ascertained.

ART. 178. All notifications to railroad companies shall be made at their domicile, and when citations are served on the station masters they shall be of legal value only when the station masters are duly authorized to represent the companies.

ART. 179. The companies shall not resist the attachment of their warehouses and depots when made by virtue of a judicial mandate. When an attachment is made, the articles attached shall in no case be dispatched and returned to the shipper or consignee, but they shall always be at the disposal of the court.

ART. 180. It is the duty of the company to keep in good condition the article which, for any reason whatsoever, may have been deposited in its stations.

When they require more care than the company can exercise the provisions of the commercial code for similar cases shall be observed.

ART. 181. Articles forgotten by passengers and left in trains or waiting rooms, those falling on the way when the train passes, and all those the owners, shippers, or consignees of which are unknown, shall be kept in a depository; a special record shall be made of the same, stating the date, and place of finding them, and their description.

If they have been advertised three times in the official bulletin of the province, and after a year has elapsed nobody has appeared to claim them, they shall be offered at public auction, and the proceeds thereof shall be applied to charitable institutions after deduction by the company of the expenses for care and storage.

ART. 182. The power conferred on each governor by these regulations may be conferred in whole or in part to only one of the governors of the provinces crossed by the same railroad as may be required by local conditions and by the better public service, in the judgment and at the will of the Government.

ART. 183. The telegraph lines in charge of the companies shall only send news, notices, and dispatches relating to the railroad service.

ART. 184. The care, as well as the attendance and maintenance of the telegraph material, including the wires devoted to the Government service, shall be at the expense of the companies.

The offenses committed against the telegraph service, and those causing destruction or damage of its material, shall be considered as offenses committed against the road, and, as such, punished according to the provisions of Title V of the railroad police law.

ART. 185. In the most public places of the stations, and especially in the waiting rooms, there shall always be posted, for public information, copies of these regulations.

Their provisions and those of the articles of conditions referring to merchandise shall also be posted in the places where the latter is received.

ART. 186. The chief conductor of every train shall always carry on the trip a copy of these regulations.

The engineers, firemen, brakemen, road guards, and other employees in the service of railroads shall be given an extract of the provisions of the regulations which they may have to observe.

ART. 187. The department of public works has the power to fix the times when the companies must submit for approval their regulations, schedules, and other provisions, which they are compelled to do.

If the time fixed elapses without the companies doing so, the Government shall decide as it may deem fit.

ART. 188. Offenses against these regulations, the decisions of the Government, and those issued by governors of provinces, relating to

railroads and their best service and police, shall be punished according to Title V of the railroad police law.

ART. 189. All provisions which may have been issued up to date for a better understanding and application of the articles of the regulations of July 8, 1859, in so far as they do not conflict with the prescriptions of these regulations, shall be considered in force. Approved by H. M.—C. Toreno.

And by order of His Excellency it is published in the *Gaceta* for general information.

HAVANA, *March 20, 1893.*

ESTANISLAO DE ANTONIO,
Secretary-General.

O

TRANSLATION

OF THE

LAW OF RAILROADS

FOR THE

ISLAND OF PUERTO RICO,

GRANTED TO THE ISLAND

BY

ROYAL DECREE OF DECEMBER 9, 1887, AND PROMULGATED IN PUERTO RICO ON JANUARY 10, 1888.

WAR DEPARTMENT,
1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

LAW OF RAILROADS

FOR THE

ISLAND OF PUERTO RICO.

CHAPTER I.

CLASSIFICATION OF RAILROADS.

ARTICLE 1. This law refers to all railroads, whatever be the system of traction employed.

ART. 2. Railroads are divided into lines of general service and of private service.

ART. 3. Railroads of general service are those devoted to public operation for transportation of passengers and traffic of merchandise; those of private service are devoted to the exclusive operation of a given industry or to private use.

ART. 4. For the purposes of this law, the following lines form the general plan of railroads of the island of Puerto Rico:

1. From San Juan de Puerto Rico to Mayagüez, by way of Arecibo and Aguadilla.
2. From Rio Piedras to Humacao, by way of Fajardo.
3. From Ponce to Mayagüez, by way of San German.
4. From Ponce to Humacao, by way of Arroyo.
5. From Caguas to the beach of Naguabo, by way of Juncos.

ART. 5. All the lines included in the plan adopted by the previous article, and also those which may be included in the future in said plan, are lines of general service. Lines devoted to the operation of coal veins and mines of importance, may also be included in those of general service when so classified.

ART. 6. The plan of railroads can not be changed or modified but by virtue of a law.

ART. 7. All the railroad lines of general service are of public ownership, and shall be considered as works of public utility, which are entitled to the right of eminent domain.

ART. 8. The declaration that a railroad, devoted to the operation of a coal vein or of mines of importance, is of general service, shall be made by a law. In order to obtain said declaration, a report of experts as to

the importance of the mines shall in all cases be necessary. The report shall be made by the Secretary of the Colonies, after hearing the Superior Consulting Board of Mines.

CHAPTER II.

CONCESSION AND AUTHORIZATION TO CONSTRUCT RAILROADS OF GENERAL SERVICE.

ART. 9. The construction of lines of general service may be undertaken by the general government, by companies, or by individuals.

ART. 10. In order that the government may undertake the construction of a line with national funds, or with the aid of the provinces or towns, it is necessary that the line be included in the plan, and besides, its immediate execution must be authorized by a special law.

ART. 11. When a line of general service is to be constructed by individuals or companies, the concession must always be preceded by a law fixing the conditions under which the concession is to be granted.

ART. 12. The construction of lines of general service may be aided with public funds:

1. By carrying on certain works in conjunction with the lines.
2. By delivering to the companies at stated periods a part of the capital invested.
3. By allowing the use of works constructed for public use compatible with the use of the railroads.
4. By granting exemption from customs duties upon the material of construction and operation of the railroads, complying strictly with the provisions of the laws of the Budget or any others in force.
5. By guaranteeing interest, which shall not exceed 8 per cent per annum on all, or on part, of the capital invested in constructing the railroad.
6. By delivering to the companies an annual amount per kilometer in operation, repayable with half of the gross earnings.

ART. 13. The provinces and towns directly interested in the construction of a line of general service, shall contribute with the State to the subsidy granted, in the proportion and manner prescribed by the law referred to in Article 11.

ART. 14. The aid which is to be given the constructing companies, once determined by the Laws of Concession, the concession shall be offered at public auction, under the terms fixed, for three months, and shall be awarded to the highest bidder, with the obligation to pay to the proper party the cost of the plans of the project, which may have served as a basis for the concession; the said cost shall be fixed, before making the public sale, in the cases and in the form determined by the Regulations.

ART. 15. In order to be able to bid at the auctions, it must be shown that 1 per cent of the total value of the railroad, according to the

approved estimate, has been deposited as a guaranty of the proposals which are submitted.

ART. 16. In no case shall the concession titles to lines of general service be issued, until the holder of the concession shows that he has deposited, as a guaranty of his obligations, 5 per cent of the amount of the estimate, if the concession has a subsidy, and 3 per cent if there be none.

If the holder of the concession allows fifteen days to pass without making the deposit, the award shall be declared null, with the forfeiture of the bond given, and the concession of the line shall be again offered at auction within the period of forty days.

ART. 17. The companies holding concessions of lines enjoying subsidies can not dispose of the amounts deposited as guaranty of the construction of the railroad, until they have totally finished the works which are the object of the concession. In case the line has no subsidy, the guaranty may be returned, when it is proven that there are works finished equivalent to a third of the cost of the works included in the concession. The said completed works shall remain as a guaranty for the fulfillment of the conditions stipulated.

ART. 18. The project which may have served as a basis for the concession of a line, can not be changed in any manner whatsoever, by the holder of the concession, without first obtaining the proper authorization from the Secretary of the Colonies, granted with the requisites prescribed by the Regulations of the present Law.

ART. 19. When, as a consequence of the changes referred to in the preceding article, the cost of the work is diminished, the direct subsidy shall be diminished in proportion to such diminution; if the changes or modifications increase the cost of the work, even when these changes perfect the same, and advantages accrue by its use, the subsidy granted by the Law of concession shall never, thereby, be increased.

ART. 20. When the work is completed, and the operation of the line belongs to the owner of the concession, the State shall reserve to itself the supervision thereof, through its expert agents, so that the operation of the line may be conducted according to the conditions stipulated.

ART. 22. The concessions of lines of general service shall be granted, at the most, for ninety-nine years.

ART. 23. At the expiration of the period of the concession, the State shall acquire the granted line with all its dependencies, and shall fully enjoy the right of operation.

ART. 24. No railroad concession shall create a monopoly in favor of companies, or individuals, and no other subsequent concessions for roads, canals, railroads, works of navigation, or others, in the same district where the railroad is situated, or in another adjoining it, or distant therefrom, shall serve as a basis for claiming any indemnity whatsoever in favor of any of the owners of the concessions.

CHAPTER III.

FORMALITIES WITH WHICH THE AUTHORIZATION OR CONCESSION SHALL BE REQUESTED.

ART. 25. When the Government shall deem it proper to construct with public funds, one of the railroad lines included in the plan, it shall submit to the Cortes, together with the form of authorization, the following documents:

1. A memorial descriptive of the plan.
2. A general plan and longitudinal profile.
3. An estimate of the cost of construction, and the annual cost of repairs and maintenance of the work.
4. An estimate of the material necessary for the operation, and the annual cost of its repair and maintenance.
5. A schedule of the highest rates to be demanded for fares and transportation.
6. Such other conditions as may be deemed proper.

According to the Law of Budgets of June 22, 1880, railroad concessions of general service may also be granted without the necessity of a previously approved project, but complying with fixed technical conditions as to route and construction and to a fixed itinerary. Said conditions shall take the place of the project for the purposes of the present law, it being understood that the estimate which shall serve as a basis for the public auction shall be that of the average cost of a kilometer and the maximum length fixed for each line.

ART. 26. Individuals and companies who may desire the concession of a railroad line declared to be of general service, shall address their petition to the Secretary of the Colonies, and must present with it the documents constituting the plan, and must also show that there has been deposited as a guaranty of the plan, 1 per cent of the total cost of the works and the material or the operation of the line, according to the estimates.

ART. 27. The plan being approved, and the conditions of the concessions being mutually accepted, the Government shall present to the Cortes the proper form of Law, with the document mentioned in Article 25.

ART. 28. When individuals or companies desire a declaration that the railroad line they propose to construct is of public service, they shall address their petition to the Secretary of the Colonies, together with a memorial and a general plan and profile of the line. The said Secretary shall then give a hearing, at which the Provincial Deputation and the Municipal Corporations interested in the construction may be heard, as well as the corporations and authorities which, in their judgment, may shed light on the subject, as well as the Consulting Board of Roads, Canals, and Ports, and he shall then submit, as

a result of this hearing, the form of Law to the Cortes in order that the railroad be included in the plan of those of general service. This declaration being made, the proceedings determined by the Articles of Chapter III to grant the concession, if there be grounds for it, shall be followed.

ART. 29. When two or more petitions are presented with different plans, so that a railroad of public service is declared of general utility, a hearing on all of the plans, as provided for by the previous article, shall be given, so that the law making the declaration shall redound to the benefit of the one offering greater advantages to the general interests of the country.

CHAPTER IV.

PRIVILEGES AND GENERAL EXEMPTIONS GRANTED TO COMPANIES HOLDING CONCESSIONS OF RAILROADS OF GENERAL UTILITY.

ART. 30. Foreign capital employed in the construction of railroads, and loans for this purpose, shall be under the protection of the State, and are exempt from reprisals, confiscations, or embargoes by reason of war.

ART. 31. The following shall be granted to all railroad companies of general utility:

1. The public lands which the road and its appurtenances may have to occupy.

2. The rights which the inhabitants of the districts, through which the line passes have, to cut timber, to pasturage, and other rights, shall be enjoyed by the employees and laborers of the companies, and for the care of its draft animals employed in the works.

3. The right to open quarries, gather loose stone, construct lime, chalk, and brick kilns, to deposit materials, and to establish workshops in lands adjoining the lines. If these be public lands, the right shall be used after giving previous notice to the local authority; but if they be private property, or property of the province or municipalities, the lands may be used only after the parties have agreed, either by mutual consent or by virtue of the law of eminent domain, with reference to the temporary occupation.

4. The exclusive right to collect, while the concession lasts and according to the schedule of rates approved, the rates charged for passengers and freight, without prejudice to those belonging to other companies.

5. For the lines which can revert to the State, the exemption of the mortgage charges due or on account of the charges for transfers of property, made for the construction of these railroad lines and their appurtenances, by virtue of the law of eminent domain, as well as those arising from contracts for the same purposes, made by the companies with individuals.

CHAPTER V.

FORFEITURE OF THE CONCESSION OF RAILROADS OF GENERAL SERVICE.

ART. 32. The declaration of the forfeiture of the concession of a line of general service, shall always be made after proceedings instituted in accordance with the Regulations.

ART. 33. In order to declare the forfeiture of a concession, the full Council of State must be heard.

ART. 34. The holder of the concession may appeal from the resolution of the Government declaring the forfeiture, to the administrative officers, where these matters are in controversy, within the period of two months from the day of publication in the Official Gazette of Puerto Rico.

If he does not appeal within this time, the ministerial resolution shall be considered as consented to, and there shall be no recourse whatever against it.

ART. 35. The forfeiture of a concession on account of failure to perform, attributed to the holder thereof, shall always be accompanied by the loss of the bond to the benefit of the State.

ART. 36. The concessions of railroads included in this chapter shall lapse in any of the following cases:

1. If the works are not commenced or finished within the time fixed by the law of the concession, except in cases of force majeure, so declared after judicial proceedings, in which the full Council of State shall be heard. When any of these cases occur, and are duly proven, the time prescribed by the Secretary of the Colonies may be extended for the period absolutely necessary, which can never exceed that fixed in the concession for the construction of the works. The extension having ended, the concession shall lapse if the provisions prescribed at the time of its execution are not fulfilled.

2. If the public service of the line be totally or partially interrupted, except in cases of force majeure, declared to be such in the manner prescribed by the first paragraph of this Article.

3. When the company holding the concession is dissolved by an administrative or judicial act or declared in bankruptcy.

ART. 37. In the cases of forfeiture by dissolution or bankruptcy the Secretary of the Colonies shall take possession of the works and of the fixed and movable material, taking charge of the operation through a council which he shall appoint, in which he shall give representation to the shareholders owning obligations and to the creditors of the lapsed company.

ART. 38. If, when the forfeiture is declared, the works have not been begun, the administration shall be freed from all liability to the holder of the concession.

ART. 39. The forfeiture having been declared, for any cause whatsoever, a public auction shall be held, in order to grant a new concession

according to this law, reserving to the original holder of the concession the right to an indemnity for the value of the project of the plan and the works executed, which may be taken advantage of, discounting the subsidy and the amount of the bond, if it has been returned.

ART. 40. The indemnity for the value of the plan and works, which may be taken advantage of, shall be given after an appraisal is made by the Engineers of Roads, Canals, and Ports, or by Military Engineers who have devoted themselves to public works, whom the Governor-General may select; the indemnity shall be approved by the Consulting Board of Roads, with a hearing to the interested party.

ART. 41. From the cost of the plan, and of the works which the new holder of the concession shall deliver, the expenses of appraisal shall be deducted, and the remainder shall be delivered to whom it may rightfully belong.

ART. 42. In case the award of the concession is not obtained in three consecutive auctions, the State shall take possession of the works, without the original holder of the concession having the right to any indemnity whatsoever.

CHAPTER VI.

CONDITIONS OF CONSTRUCTION TO WHICH THAT OF RAILROADS FOR GENERAL SERVICE MUST CONFORM.

ART. 43. The railroads of general service shall be constructed according to the following conditions:

1. The width of the road or distance between the two interior sides of the rails shall be 1 meter.

2. The width between the tracks at the stations and crossings shall be 2 meters at least, and in the main line it shall be 1 meter and 60 centimeters.

3. The other dimensions, as well as the other conditions of construction, shall be fixed in each particular case by the Secretary of the Colonies, after hearing the Consulting Board of Roads, Canals and Ports.

4. The roads of general service may be constructed with one or two roads, or by combining these systems.

ART. 44. When lines not included in the general system are to be established, the technical conditions expressed in the preceding article may be modified, and those to which the line must conform shall be fixed in a special law which must precede the concession.

CHAPTER VII.

OPERATION OF RAILROADS.

ART. 45. Every railroad shall have two distinct uses—for passengers and for freight.

ART. 46. The charges for each shall be fixed by the schedules of rates in force for each line.

ART. 47. The document of conditions of the concession, shall specify the special schedule of rates for certain services to the State, as well as those which are free. Among the latter is the carrying of the regular mails, which, as well as everything necessary for the operations of railroads, shall be determined by the Secretary of the Colonies, with the concurrence of the proper Secretaries, as the case may be.

ART. 48. From the carrying companies and from individuals who use their own materials the legal freight only may be demanded.

ART. 49. After the first five years that the railroad is in operation, and thereafter every five years, a revision of the schedules of rates shall be made.

If the Government, without injury to the interests of the company, believes that the rates may be lowered, but the company does not agree to the reduction, it may, nevertheless, be made by a Law guaranteeing to the company the total earnings of the last year, and besides, the average progressive increase of the earnings which they may have had in the last five years.

ART. 50. The companies may at any time reduce the schedule of rates as they may deem best, advising the Secretary of the Colonies through the Governor-General.

ART. 51. When schedules of rates are to be changed, it shall be duly announced beforehand to the public.

ART. 52. There shall be established in all the lines a telegraph line, the number of wires of which, and other conditions as to the general and official service, shall be determined in the document of conditions of the concession.

ART. 53. When the public service of the company is totally or partially interrupted, owing to its own fault, the Government shall, as a matter of course, take the steps necessary to secure said public service temporarily at the expense of the company.

Within a period of six months, the company holding the concession must prove that it has sufficient means to continue its operation; the company may cede the operation to another company or third person, after a previous special authorization of the Government.

If even by this proceeding the service is not renewed, the concession shall be considered as forfeited, and, therefore, what is prescribed by the articles of Chapter V shall be complied with.

ART. 54. The operation of railroads belonging to the State shall be carried on by the Government or by companies which may contract for the service at public auction, as it may be best for the interests of the public.

ART. 55. In all concessions, the right of the Government to the necessary supervision and intervention so as to keep the service of the railroad in good condition, and to secure the expenses and receipts of the company, shall be stated.

ART. 56. In the Law and Regulations to be made for the police of the railroads, there shall be determined whatever is proper for their maintenance and security.

CHAPTER VIII.

PLANS FOR RAILROAD LINES.

ART. 57. The Secretary of the Colonies shall order that plans of the lines included in the general system be made, or those begun be completed, by Engineers of Roads, Canals, and Ports, so that with the respective plans of the lines, the Government may submit to the Cortes the proper form of Law authorizing the bidding.

These plans may be substituted by a statement of the technical conditions of the drawing and construction, to which Article 25 refers.

ART. 58. The Secretary of the Colonies or his delegates, may authorize individuals or companies to make plans so as to collect the facts and documents which, according to the provisions of this Law, are necessary to obtain the concession of a line. This authorization can not be understood as granting any right whatever against the State, nor limiting in any way, the right which the Secretary of the Colonies has to grant equal authorizations to those who may want to study the same line.

ART. 59. The concession for plans shall be preceded by the deposit of the bond, that the Secretary of the Colonies or his delegates shall consider sufficient, to answer for the damages which the said study may occasion in the lands traversed by the line.

The approval of the plans shall not take place until it has been gone over on the ground by the Engineers of the State, and the opinion given by the Consulting Board of Roads, Canals and Ports.

CHAPTER IX.

INTERVENTION OF THE GOVERNMENT IN RAILROADS.

ART. 60. The Secretary of the Colonies shall decide all questions regarding the construction and operation of railroads, as well as the police of the same, and the compliance with the document of conditions, including the schedules of rates for storage, loading and unloading, and transportation.

ART. 61. The supervision as to the maintenance and operation of the railroads appertaining to the Government, shall be made through the Secretary of the Colonies.

The Regulations and special instructions, which may be ordered for the fulfillment of this law, shall determine the organization of the personnel devoted to this service, the conditions of efficiency which the individuals of the said service must show when they are not experts of Public Works, and the duties of both.

CHAPTER X.

RAILROADS DEVOTED TO PRIVATE USE.

ART. 62. Railroads devoted to the operation of an industry or to private use may be constructed without any other restrictions, than those imposed by the Regulations as to safety and public health, provided that the works do not occupy or affect public property, nor that

there be required for their construction the exercise of the right of eminent domain.

ART. 63. The right to seize by eminent domain, can not be granted to a railroad included in the preceding article, nor may the occupation of lands of the State; but public lands, may be seized and occupied, in conformity with the General Law of Public Works.

ART. 64. When railroads, devoted to the operation of an industry or to private use, are of such importance that they are capable of rendering public service, the occupation of lands belonging to the State may be granted by means of a Law, and the right of eminent domain.

ART. 65. After the concession to which the preceding articles refer, has been made, the individual or company obtaining it may construct the railroad and use it as he may deem best, with no further intervention on the part of the Government, than that relating to conditions of safety, police, and good government of property belonging to the public.

ART. 66. The individuals or companies who desire to construct and operate a railroad of those included in the preceding article, shall address their petition to the Secretary of the Colonies, accompanied by the plans.

ART. 67. The Secretary of the Colonies, for his information, shall ask for all the reports which he may deem proper, the previous opinion of the Consulting Board of Roads, Canals and Ports being an indispensable requisite.

ART. 68. These railroads, unless otherwise provided for in a special Law, shall be granted by the Government for ninety-nine years, whenever the occupation of public property is asked for.

When the railroads ask for the declaration of public utility, it shall be the subject of a law.

CHAPTER XI.

TRAMWAYS.

ART. 69. Under the name of tramways are designated, for the purposes of this law, the railroads constructed on the public highways.

ART. 70. The approval of the plans of tramways, which are to occupy the roads belonging to the State or Province, belongs to the Secretary of the Colonies.

The Secretary of the Colonies shall also approve the plans of tramways, the development of which demands the simultaneous occupation of roads belonging to the State or to the Province, and of municipal roads or the highways of towns.

ART. 71. When the tramways are constructed on municipal roads, the approval of the plans shall belong to the Governor-General, who, in order to grant it, must hear the Engineer in Chief of Public Works of the Island.

ART. 72. In all cases when the power to be used is other than animal force, the approval of the plans of the tramways belongs to the Secretary of the Colonies.

ART. 73. The concession of tramways belongs to the Secretary of the Colonies, when the works are to occupy the high roads of the State or shall simultaneously traverse high roads of the State, and highways of the Province and of Municipalities.

ART. 74. When the tramways are to be constructed on high roads which are exclusively in charge of the Province, or traversing two or more Municipalities, the concession belongs to the Provincial Deputation.

ART. 75. The concessions belong to the Municipal Council when the tramways occupy roads which are in charge of a single Municipality. When they are essentially town roads, it must be preceded by the approal of the Governor-General.

ART. 76. Tramway concessions can not be granted for more than sixty years, and shall be subject to an auction in regard to the maximum schedule of rates and to the duration of the concession.

ART. 77. In the Regulations which shall be drawn for the compliance of the present law, the general conditions to which tramways must conform, in relation to the technical conditions as well as to the steps to be taken in the granting of the concession, shall be stated.

ART. 78. In the document of special conditions, which must form part of the concession of every tramway, the special conditions shall be determined which, besides the general ones to which the previous article refers, are to govern in matters of construction and operation.

GENERAL PROVISIONS.

ART. 79. The provisions of the present law shall not invalidate any of the rights acquired previously to its publication and in compliance with the then existing legislation.

ART. 80. All laws, decrees, and other provisions previously existing, which are in opposition to the present law, are hereby repealed.

Approved by Royal Decree of this date.

Madrid, December 9, 1887.

BALAGUER.

REGULATIONS

FOR THE

EXECUTION OF THE RAILROAD LAW OF THE ISLAND OF PUERTO RICO,

PROMULGATED ON JANUARY 27, 1888.

CHAPTER 1.

FORMALITIES NECESSARY FOR THE DECLARATION OF GENERAL SERVICE OF A RAILROAD LINE NOT INCLUDED IN THE PLAN OF THE STATE.

ARTICLE 1. The lines of general service, constituting the plan of this class of works, having been fixed by Article 4 of the Law of Railroads, in order to make any change in the said plan the formalities expressed in the said law and the provisions of these Regulations, must be complied with.

ART. 2. Whenever it may be deemed necessary or convenient to add a railroad line to the plan, a preliminary plan of the same must be made, in conformity with the provisions for such cases in Article 9 of the Regulations of May 21, 1881, for carrying out the General Law of Public Works.

This preliminary plan shall consist of the following documents:

1. An explanatory memorial, in which a general description of the works shall be made, and the convenience of the line and the utility of the railroad, the construction of which is to be of general interest, shall be shown.

2. A general plan and a longitudinal profile, which shall show the direction to be followed by the line and shall demonstrate the possibility of its realization within the technical conditions acceptable in this class of roads.

3. An estimate, as near as possible, of the cost of the railroad, including the rolling stock necessary for its operation.

4. The principal items of the schedule of fares and freights which are to be adopted for the operation of the work, and

5. Statistical facts as to the probable business of the road which it is proposed to construct, so as to be able to judge of the advantages to be derived from its construction.

The preliminary plans shall be drawn subject to the existing instructions or those ordered for the purpose by the Secretary of the Colonies.

ART. 3. When the initiative to include a line in the plan comes from the Government, the Secretary of the Colonies shall order that the preliminary project to which the preceding article refers shall be drawn by the Engineer, or a Board of Road, Canal and Port Engineers, which may be for the purpose designated, the Secretary of the Colonies issuing the special instructions which may be considered proper.

The said initiative may come also from a Municipal Council, Provincial Deputation, or any other official corporation, and also from individuals or companies who are interested in the construction of the line, as provided for in Article 28 of the Law. In this case the interested corporations or individuals shall present to the Secretary of the Colonies, a petition accompanied by the preliminary plan and the documents referred to in the preceding article.

In all cases where the declaration of general service is asked for, the petition shall be published in the Official Gazette of Puerto Rico, granting a month for the presentation of petitions by other private corporations or companies, which may ask the same declaration in their favor. Those wishing to make use of this right, shall present their petition before the time fixed, accompanying the proper preliminary plan in order that the proceedings provided by Article 29 may be followed.

ART. 4. The preliminary plan or plans admitted shall be submitted in the report provided for by Article 28 of the Law, to which these Regulations refer, and the tenth of the Regulations for the construction of Public Works.

After this formality has been complied with, the papers shall pass to the Consulting Board of Roads, Canals, and Ports for report as to the technical part of the work, as well as to the propriety of the declaration of general service and as to which of the petitions should be preferred.

ART. 5. Considering the results of the steps mentioned in the preceding articles, the Secretary of the Colonies shall decide as to the propriety of the declaration requested and as to the preliminary plan which should be preferred. If the decision be in the negative, the matter shall be considered ended without any more steps, returning the preliminary plan or plans, as the case may be, to the corporations or individuals who may have presented them. If the decision be favorable, the Secretary of the Colonies shall present to the Cortes the proper form of Law, accompanied by all the documents relative to the report and the preliminary plan which shall have deserved the preference.

The law having been promulgated, the line shall be declared of general service, being included in the general plan of railroads of this class, and considered as of public utility for the purposes of the law of Eminent Domain, all in conformity with Articles 5, 6, and 7 of the Special Law of Railroads.

ART. 6. When the declaration of general service shall be asked for in favor of a line devoted to the operation of coal or iron veins, the proceedings indicated in Articles 2 and 5 of the present Regulations shall be followed; but to the report referred to in Article 4, shall be added another of an expert, in which the Engineers of the branch, and the Superior Expert Board shall be heard as to the importance of said mineral veins, as provided for in Article 8 of the Law.

A similar procedure shall always be followed when it is a question of projected branches or important industrial centers, hearing in these cases the Deputation and the Board of Agriculture of the Province.

CHAPTER II.

CONSTRUCTION OF RAILROADS BY THE STATE.

ART. 7. Whenever the Government shall consider it necessary or proper to proceed with the construction of a railroad declared of general service, with State funds, and by administrative methods or by the usual contract, the Secretary of the Colonies shall appoint an Engineer or a Board of Road, Canal, and Port Engineers, who shall make the proper plans according to the provisions of Article 57 of the Railroad Law.

The Engineer or Board appointed for the purpose shall, above all, make an estimate of the expenses occasioned by the plans according to Article 4 of the Regulations for the execution of the Law of Public Works, complying with what is prescribed in the said article, as to the approval of the estimate.

ART. 8. The documents which shall constitute all railroad plans which the Government may order drawn, shall be those stated in Article 6 of the Regulations for the execution of the General Law of Public Works, and shall be drafted according to the following provisions:

1. The memorial shall include the description of the line and of the works of greater importance, the number, class, and situation of the stations, and a plan of the laying out of the lines and levels, with a statement of the curves of the lines.

2. A general plan and longitudinal profile of the line, as well as the plans and profiles by sections, and, in case of buildings included in the project, there shall be added all the necessary details and notes, to give a complete idea of the plan.

3. In the document of conditions, a description of the works shall be made, and the requisites shall be stated which the materials employed in the said work must have, as well as everything relating to manual labor and employment in the works.

4. The estimate shall contain the details of the number of cubic meters, the prices of the work to be done, and other facts necessary to show the total cost of the railroad.

All these documents shall be drawn according to the forms used for drafting railroad plans, or according to those provided for in the future,

as well as those general rules of the service and special instructions, which the Secretary of the Colonies may deem it proper to order.

ART. 9. To the said documents mentioned in the previous article, which are those which constitute the plan in its technical part, the following shall be added:

1. A detailed statement of the material which may be necessary for the construction and operation of the railroad.

2. A detailed schedule of the maximum passenger and freight rates, with instructions giving the proper rules for the application of the schedule.

3. Statistical facts as to the probable business of the proposed railroad, calculating, in view of such facts and the application of the schedule, what profits shall accrue from the construction of the work.

For drafting these documents, the existing provisions, or those ordered in the future for the purpose by the Secretary of the Colonies, shall be taken into account.

The plan shall also be accompanied by the document of special and economic conditions referred to in No. 3 of Article 17 of the Regulations of the 21st of May, 1877, and should contain all the provisions therein stated.

ART. 10. In case the province or towns interested in the construction of a railroad shall oblige themselves to help the State, sharing with it the cost of construction, there shall be added to the papers, the memoranda in which the obligations contracted by the said corporations shall be formally stated, with specifications of the aid offered, and the time when it shall be paid to the Government.

ART. 11. The Secretary of the Colonies may submit for the information of the Corporations which he may deem competent, the plan and documents referred to in the previous articles, but on condition of always hearing the Consulting Board of Roads, Canals and Ports.

These formalities being complied with, the plan may be approved by the Government.

ART. 12. The plan of a railroad having been approved, the proper form of law shall be presented to the Cortes asking authorization for the construction of the line, as provided for in Article 10 of the special Law of Railroads; said legislative authorization having been obtained and funds appropriated for the purpose, the construction of the line shall be proceeded with according to the plan and the technical economic conditions annexed to it, and according to the provisions of Articles 14 and 17 of the Regulations for the execution of the General Law of Public Works; the towns and provinces interested, in the proper case, being obliged to pay the State the aid which they may have offered.

ART. 13. The construction of a line made by the Government being finished, it shall be determined if the operation of the railroad shall be by the State or by contract, in view of the provisions in such cases

of Article 27 of the General Law of Public Works of May 21, 1881, and 53 of the special Law of Railroads. If the work is to be by contract, the contractor shall receive the earnings according to the schedules approved for the use and operation of the railroad, during the time which shall be stipulated, and shall deliver every year to the State a sum as compensation for the expenses incurred in the construction of the line.

The contracts shall always be made by public bids, which shall refer to the most advantageous annual payment to be paid, as provided for in the last paragraph.

ART. 14. For the lease of the operation of a railroad constructed by the State, the proper document of conditions shall be followed, which shall be approved by the Secretary of the Colonies, after hearing the Consulting Board of Roads, Canals and Ports.

In the said document there shall be stated:

1. The annual sum to be paid by the contractor, which is to serve as the basis for the bids;

2. The number of years during which the contractor is to enjoy the receipts of the earnings fixed in the schedule;

3. The rolling stock which is to be used in the operation, whenever it is stipulated that the stock is to be paid for by the contractor and not by the State;

4. That the maintenance and repair of the works of all kinds and of the rolling stock shall be at the expense of the contractor during the term of the contract;

5. That the contractor is bound not to interrupt the service unless by reason of force majeure, and to deliver the road in good condition for service at the expiration of the contract, a similar declaration, if deemed proper, being made as to the rolling stock;

6. The cases of rescission of contract and the consequences of that rescission; and

7. All the other provisions considered proper, as provided for in such cases, by Article 54 of the Regulations of the 21st of May, for the execution of the General Law of Public Works and in Article 28 of the same Regulations in cases of forfeiture of the concession.

CHAPTER III.

CONSTRUCTION AND OPERATION OF RAILROADS BY CONCESSIONS TO INDIVIDUALS OR COMPANIES WITHOUT SUBSIDY OR AID OF PUBLIC FUNDS.

ART. 15. The lines of general service, the plans of which may have been studied by the Government, may be constructed by granting concessions to individuals or companies, in conformity with the provisions of the General Law of Public Works and Chapters 2 and 3 of the Regulations for its execution, according to whether the lines be constructed

without any aid whatsoever, or with the subsidies mentioned in the special law of railroads of Puerto Rico.

In the construction of a railroad by concession, the general conditions fixed, or which may in the future be fixed, shall govern, as well as the technical conditions forming part of the plan and the special and economic conditions which may be stipulated in each case. Those conditions, undetermined in the general ones, shall be made special; also the schedule rates, the dates on which the work is to begin and end, the amount of bond to be given, and other special clauses which may be determined on for the granting of the concession.

Concessions for the lines declared of general service, to which this chapter refers, may be granted by the Government without the necessity of previously drafting the plan, as stated in Article 25 of the Special Law of Railroads; but among the technical conditions of the drawings and construction, which are to be a substitute of said project, the following are indispensable requisites:

1. The itinerary or the principal towns and points through or near which the line must pass.
2. The maximum length of the line.
3. The number and class of the stations and depots.
4. The maximum grade of the levels and minimum radius of the curves.
5. The general minimum dimensions and the maximum strain to which the materials can be submitted, as well as the coefficients of stability, which shall be considered admissible.
6. The basis on which the foundations of the line and works is to be constructed.
7. The general provisions to which the rolling stock must conform.
8. All the provisions which may be considered necessary for the solidity of the work, security, and facilities of traffic.
9. The average cost per kilometer, calculated for the entire line.

Besides these technical conditions, the general, special, and economic conditions shall be complied with, to which the previous paragraphs in this article refer, as if there existed an approved plan.

ART. 16. The study of a line declared of general service may be made by individuals or companies, provided these shall petition and obtain the superior authorization which is required for that purpose in Article 55 of the Special Laws of Railroads of Puerto Rico.

The authorization shall be granted with the formalities stated in Article 59 of the same Law, and in the twenty-first of the Regulations of the General Law of Public Works.

The plans which may be presented by individuals shall consist of the same documents, and be drafted in the same form, as those mentioned in Articles 8 and 9 of the Regulations for Railroads constructed on account of the State.

ART. 17. The individuals or companies who shall ask for a concession of a line declared of general service, without subsidy, shall present to

the Secretary of the Colonies or the Governor-General, a petition, accompanied by the complete plan of the road, drawn according to the provisions of the previous article, and by the document showing that the deposit of 1 per cent of the amount of the estimate has been made. The plan being presented, the petition shall be published in the Gazette of Puerto Rico, granting a time of thirty days, which can not be extended, for the admission of other petitions for concessions which may be better than the one presented, according to the provisions of Article 64 of the General Law of Public Works.

ART. 18. If the time fixed in the previous article shall have elapsed, and no oth r new plan shall have been submitted, that of the petitioner shall be sent by the Governor-General to the Engineer in Chief of Public Works of the Island, so that he may compare it on the ground, and report as to the plan of the line. The expense of the comparison shall be borne by the petitioner, who must deposit the amount in the General Treasury, as is provided for in Article 24 of the Regulations for the execution of the General Law of Public Works.

After the project has been returned by the Engineer in Chief, the Governor-General shall submit it for the report provided for in Article 24. Said official shall forward it with his own opinion to the Secretary of the Colonies, who shall afterwards pass it to the Consulting Board of Roads, Canals, and Ports, whose opinion shall not only refer to the technical part of the plan, but also to the examination of the proposed schedules and other circumstances, which are to be taken into consideration in granting the concession, as stated in Article 26 of said Regulations.

ART. 19. If, after all the steps are taken, it be necessary or advisable to modify the plan, either in its technical or economic part, or in the conditions under which the concession is to be made, it shall be returned to the petitioner for him to make the proper corrections, within the time fixed for the purpose, or for him to withdraw his petition if it be not convenient for him to modify his plan.

When the interested party shall not be satisfied with what is finally decided by the Government, as to the points in controversy, the plan shall be considered abandoned, and shall be returned to the petitioner, together with the deposit which may have been made.

ART. 20. In the case to which the preceding articles refer, namely, when it is a question of a petition for a concession without subsidy, and for which only one proposition shall have been presented, said concession shall be granted without the formalities of public auction; but always by means of a Law, as provided for in Article 27 of the Law of Railroads.

To this end the Secretary of the Colonies shall present to the Cortes the proper form of Law, accompanied by all the documents mentioned in Article 25 of the Law of Railroads, and in the corresponding articles of these Regulations.

ART. 21. The law to which the preceding article refers being passed, and the bond of 3 per cent of the amount of the estimate being deposited

within the time fixed by Article 16 of the Law of Railroads, there shall be issued to the interested party, or to the company which may have solicited the concession, the proper instrument, making the contract a public document, and including in it, verbatim, the document of general conditions, the special law of concession, the special and economic conditions, and schedule of maximum rates.

During the number of years fixed by the law of concession, which shall not exceed ninety-nine, the owner of the concession may operate the road and enjoy the privileges and exemptions mentioned in Chapter IV of the Law of Railroads, as well as the right to seize by eminent domain, according to existing provisions, the lands and buildings necessary for the construction of the work.

ART. 22. The owner of the concession shall proceed in the construction of the work according to the condition of the concession, and under the inspection which appertains to the Government agents, as determined by the General Law of Public Works and Article 40 of the Regulations of May 21, 1881.

During the construction, no changes or modifications may be introduced which shall not have been duly authorized, after reports of the Engineers in charge of the inspection and supervision of the works, and the opinion of the Consulting Board of Roads, Canals, and Ports.

The bond of 3 per cent shall not be returned to the owner of the concession until he shall show that he has work completed of a value equivalent to a third of the amount of that embraced by the concession, as provided for in Article 17 of the Law of Railroads.

ART. 23. The work being all concluded, the owner of the concession shall make, at his own expense, with the assistance of the Government Engineers, the survey and detailed plan of the railroad and all its appurtenances, drawing also a descriptive plan of the stations, bridges, buildings, and constructions which may have been made.

Of each of the documents and plans mentioned in the preceding paragraph, and of the notes of the survey, a copy properly legalized shall be delivered by the owner of the concession to the Governor-General for safe-keeping in the Bureau of the Chief of Public Works.

ART. 24. A railroad, or part of it, shall not be in operation without the authorization of the Governor-General, after report of the examination of the work and construction material, drawn by the Government Engineers charged with the inspection, and in which it shall be declared that the railroad may be open to the public. Said report shall be sent by the Governor, with his resolution, to the Secretary of the Colonies.

ART. 25. The companies owning concessions, shall operate the railroads during the term fixed by their concessions, in conformity with the approved schedule and according to the conditions which may have been stipulated for its application.

The said companies shall draw the necessary Regulations for the good service, administration, and operation of their lines, submitting the Regulations to the approval of the Secretary of the Colonies, when

they affect the safety of the operation or the relations of the public to the companies.

The owners of concessions are at liberty to choose, without any other restrictions than those imposed by existing provisions, the personnel of all classes for the construction and operation of the lines, as well as the organization of this personnel, and everything pertaining to the internal government of the companies.

The Secretary of the Colonies shall exercise through his agents, the inspection and supervision which belongs to him by law, not only as to expert but also as to administrative supervision, the companies owning concessions, complying with the orders which the said agents shall communicate to them, within the scope of their authority, and according to the provisions in such cases.

ART. 26. The companies shall be obliged to keep in good condition the railroad and its appurtenances, so that travel may be constant, easy and safe. All the expenses for maintenance and repairs, ordinary as well as extraordinary, shall be defrayed by the companies.

The railroads shall be considered and cared for like other public roads, and the trackmen who shall be named by the companies owning concessions, may use the same arms and enjoy the same privileges as the road repairers (peones camineros) of the highways of the State. In order that the said trackmen may be entitled to claim these privileges, they must wear the badge agreed on by the companies, which they are to use while performing their duties.

ART. 27. Whenever the Government may consider it proper to revise the schedule in conformity with the right which is given it by Article 49 of the Law, it shall proceed, whatever may be the change intended, to an investigation, in which there must be heard without fail, the company owning the concession, or the Board of Agriculture, Manufactures, and Commerce of the Province, or the Deputation of the same, the Engineer in Chief of Public Works, the Governor General, the Consulting Board of Roads, and the Superior Council of Agriculture. After the investigation has been concluded, there shall be ordered, in a proper case, by means of a Royal Decree, the reduction to be made in the schedules; and, if the company owning the concession does not consent to the reduction, the Secretary of the Colonies shall submit to the Cortes the proper form of Law to carry the reduction into effect, and to determine the means for guaranteeing to the owner of the concession, the earnings of the year preceding the revision and the progressive increase of the receipts, which the railroad may have had in the five years, which terminated with said year.

ART. 28. Besides the cases of forfeiture provided for in Article 36 of the Railroad Law, there shall be also those determined by the Special Law of the concession, and by Article 61 of the General Law of Public Works.

ART. 29. For the purposes of Article 36 of the Law, the following shall be considered cases of force majeure:

1. Floods or rising of rivers whenever they are greater than those that by tradition or in any other trustworthy manner, are known to have occurred in more or less distant epochs.

2. Fires occasioned by the electricity of the atmosphere.

3. Epidemics.

4. Earthquakes.

5. The sinking of the earth and landslides, where the work is constructed or to be constructed, as well as the breaking off of great blocks or masses of the mountains.

6. The destruction caused in time of war by the belligerent forces or those occasioned by the sedition of the people.

7. Robbery by mobs, and violent destruction.

8. Cyclones or gyrating hurricanes.

9. In general, those extraordinary accidents, the effects of which are evidently irresistible.

ART. 30. Whenever the owner of a concession shall ask for an extension to finish the works of his concession, based on damages produced by an unforeseen accident, he shall address himself to the Governor-General within the period of twenty days, which can not be extended, counted from the date of the occurrence, stating the damages which have occurred or injuries occasioned, the causes to which they may be attributed, the means employed to avoid the damages, and the time which, in his judgment, shall be required for the repairs.

After hearing the Chief Engineer of Public Works and the Administrative Council, the Governor-General shall draft an interrogatory, so that it shall serve as a basis for the investigation to be made of the fact.

In this investigation the Provincial Deputation, the Municipal Councils of towns in which the damage may have occurred, the Engineer charged with the inspection, and the Chief Engineer of Public Works shall be heard.

The Governor-General shall direct the investigation, and after it has been concluded, the papers shall be sent with the report of the Governor-General to the Secretary of the Colonies.

The said papers shall afterwards pass to the Consulting Board of Roads, Canals, and Ports, so that it may report as to the declaration of unavoidable accident and as to the petition of extension made by the owner of the concession.

The full Council of State shall finally be heard in conformity with the provisions contained in paragraph 1 of Article 36 of the Law of Railroads.

ART. 31. The provisions of the preceding article having been complied with, the Secretary of the Colonies may extend the time fixed in

the Law of Concessions, bearing in mind the provisions of said Article 36 of the Law.

Similar proceedings shall be instituted when the owner of the concession shall desire to avoid forfeiture because of the total or partial interruption in the operation of the railroad, by reason of unavoidable accident or of force majeure; the request, in such case, shall be passed upon by the Secretary of the Colonies.

ART. 32. The proceedings for forfeiture of a concession may be commenced by the Secretary of the Colonies on his own initiative, or by virtue of an appeal of the Governor-General, the Provincial Deputation, the Board of Agriculture, Manufactures and Commerce, or of the Chief Engineer of Public Works.

The authority or corporation which may consider that there is a case of forfeiture, shall address the Governor-General in a memorial, giving the reason on which the appeal is based. This petition shall be passed to the owner of the concession, so that he may answer the charges, and afterwards, on this basis, an investigation shall be made by the Governor-General, in which the authorities and corporations mentioned in the first paragraph of the present article shall be heard.

The papers shall again be passed to the owner of the concession, fixing a time, which can not exceed thirty days, for him to state whatever he may consider best in his defense, after which the Governor-General shall send said papers to the Secretary of the Colonies, who shall hear the Consulting Board of Roads, Canals and Ports, and the full Council of State.

In view of the report, if it be proper, the forfeiture shall be declared by the Secretary of the Colonies; the owner of the concession may appeal from this decision, according to the provisions of Article 34 of the Law of Railroads.

ART. 33. The consequences of the declaration of forfeiture of a railroad line, shall be those specified in Articles 37 to 42, inclusive, of the Law of Railroads.

When a concession is finally declared forfeited, in order that the said provisions shall take effect, the Engineers of the State appointed by the Governor-General, shall proceed to the survey and valuation of the work constructed in the line, the material collected for the same, the rolling-stock devoted to its operation, as well as all kinds of buildings and appurtenances. The survey and valuation shall be adjusted to the rates of the estimate which accompanied the plan of the road, and a memorial explaining the operations made shall be added, stating the condition of the work and material at the time the appraisal is made, and the real value, if they have suffered some damage by reason of age or wear, or by defects of construction, as well as the plans of the road, and of all kinds of buildings and work. The owner of the concession shall be advised of the said appraisal and documents, so that he may make proper observations.

The opinion of the Consulting Board of Roads, Canals and Ports shall be heard afterwards, as to the survey and valuation, and as to the observations of the interested party.

ART. 34. The valuation of the works and materials, made in conformity with the provisions of the preceding article, and duly approved afterwards by the Secretary of the Colonies, shall serve as the basis for the application of Articles 37 to 41 of the Law.

From the amount of the appraisal of the plan and of the work which may be used, the bond or part of it returned at the time of the declaration of forfeiture, to the owner of the concession, shall be deducted, according to Article 69 of the General Law of Public Works, and Article 35 of the Special Law of Railroads. The expenses of the appraisal shall also be deducted, and the remainder shall be delivered to whom it may by right belong.

ART. 35. At the expiration of the time of the concession, the Government shall take the place of the company owning the concession, with all the rights of property to the lands and work mentioned in the said statement or plan referred to, in Article 23 of these Regulations, and shall immediately enter into possession of the railroad, together with all its appurtenances and earnings.

The company shall be obliged to deliver in good condition for service the railroad and its appurtenances, such as stations, wharves, stores, at the starting and terminal points, guard and watch houses, offices, etc.

It shall also be obliged to deliver, in good condition for service, the rolling-stock in the minimum amount determined by the special conditions of the concession

ART. 36. Two years before the legal termination of the concession, the Secretary of the Colonies shall appoint an Engineer or a Commission of Engineers to make the general examination of the line and of all its dependencies, as well as of the rolling stock of all kinds and other material which the owner of the concession is to deliver to the State, according to the preceding article. The Secretary of the Colonies shall be immediately advised of this examination, and in view thereof shall order whatever is necessary, so that the work, building materials, and other appurtenances shall be in good condition on the day when the owner of the concession is to make the delivery. If the owner of the concession refuses to obey the orders communicated to him, the Secretary of the Colonies shall order their execution at the expense of the company, even if for that purpose it shall be necessary to attach the earnings of the railroad.

ART. 37. On the day of the expiration of a concession, the company owning the concession shall make formal delivery of the road, its material and appurtenances, according to the stipulated conditions, to whomsoever the Secretary of the Colonies shall appoint, with a detailed inventory, and according to the special instructions in the premises.

ART. 38. The document of delivery being approved, the road, with all its appurtenances and material, shall pass into full possession of the State, its operation being carried on at the expense of the State, and under the Secretary of the Colonies.

If the Government should decide that the operation is to be made by contract, the provisions of Articles 13 and 14 of these Regulations shall be followed, the company whose concession has terminated being preferred on equal conditions, if the said company shall see fit to make use of the right conferred upon it by this Article.

ART. 39. If, within the time determined in Article 17 of the present Regulations, one or more petitions for concessions shall have been submitted, an examination on the ground stated in Article 18 shall be made of each plan admitted, as well as the investigation provided for in Article 24 of the Regulations of the General Laws of Public Works. This investigation shall be enlarged so as to compare the plans submitted, in order to ascertain if any one deserves the preference.

The Consulting Board of Roads, Canals, and Ports, and the Department of the Interior of the Council of State, shall then be advised, by a Royal Decree, of the preference to be given to one of the plans in competition, so as to grant the concession requested to its author, and to return the plans as well as the deposits, to the other individuals or corporations.

The proper Law having been promulgated, according to the provisions of Article 20 of these Regulations, the subscriber of the accepted proposal shall be declared the owner of the concession, after he has made the deposit of the bond of 3 per cent of the estimate, within fifteen days, counting from the date in which the order granting the right is communicated to him.

ART. 40. If it be found from the investigations, in the opinion of the Secretary of the Colonies, that among the best propositions of petition for the concession of a railroad line, there is an equality of conditions in two or more of the said propositions, the concession shall be made after the bidding at a public auction, in which the first plan presented shall serve as a basis, provided its author shall be satisfied with the changes he may have had to make according to the provisions of Article 19 of these Regulations.

If he should fail to agree, the plan which is to serve as a basis for the auction shall be designated, according to the provisions for such cases, of Article 34 of the Regulations of the General Law of Public Works.

ART. 41. The plan which is to serve as a basis for the bidding being determined, and before presenting to the Cortes the form of Law of the concession, an appraisal of the plan shall be made, complying in all respects with the provisions of Article 35 of the Regulations for the execution of the General Law of Public Works.

This formality being complied with, and the law of concession being promulgated, the auction shall be advertised for three months. At

the auction, not only the subscribers to the proposals presented and admitted may participate, but all those who may desire to do so, and show a certificate of having deposited 1 per cent of the amount of the estimate made.

The proceedings to be followed at the auction shall be the same as those provided for in Articles 36, 37, 38 of the Regulations of the General Law of Public Works, the concession being declared granted to the bidder offering the best terms, with the understanding that the subscriber of the plan, which has served as a basis for the auction, is to have the right to collect from the auction sale the value of the said plan.

ART. 42. The concession being approved, the owner of the concession shall deposit within fifteen days from the date on which the decision of the auction shall be communicated to him, the bond of 3 per cent of the amount of the estimate, which served as a basis for the auction. To this end the proper communication shall be personally delivered to him, a receipt shall be exacted, in which the date of its delivery shall be stated.

In case the author of the plan which has served as a basis for the auction should not be the owner of the concession, he shall prove by a trustworthy document, within a month from the date mentioned in the preceding paragraph, that he has paid the author of the said plan the amount of the appraisal to which paragraph 1 of the preceding article of these Regulations refers.

ART. 43. The party obtaining the concession of a railroad line in any of the cases and terms provided in Articles 39 and 41 of these Regulations, shall have the obligations and shall enjoy the rights which are stated in the existing Laws for concession of works without subsidies, and, finally, in the construction of the works and in the operation of the railroad there shall be observed, as to the concession, the provisions of Articles 22 to 37 of these Regulations.

CHAPTER IV.

CONSTRUCTION AND OPERATION OF A RAILROAD BY CONCESSION TO INDIVIDUALS OR COMPANIES SUBSIDIZED WITH PUBLIC FUNDS.

ART. 44. When the Government itself shall have made the plans of a railroad line, in the terms provided for in Articles 7 and 9 of these Regulations, and shall deem it proper to have it constructed by concession, granting a subsidy in any of the forms stated in Article 12 of the Law of Railroads, a hearing shall be had as to the plan, and as to the necessity of a subsidy, and its nature and amount, the Provincial Deputation, the Board of Agriculture, Manufactures and Commerce, and the Governor-General being heard, and after this formality is complied with, and in view of the result of the hearing, the Secretary of the Colonies shall submit to the Cortes the proper form of Law, in

which there shall be stated the clauses of the concession, the schedule according to which it shall be operated, the number of years which the concession is to last, the aid to be given to the owner of the concession, the form and time of paying the subsidy, and the other requisites provided for by the Laws and Regulations.

In the same form of Law, there shall be fixed the proportion and form in which, together with the State, the province and towns interested in the line are to contribute to the subsidy granted, according to the provisions of Article 13 of the Law of Railroads.

When concessions of railroads are to be made, with subsidy, in the form of guaranty of interest, and without previous approval of the plan, as provided for in Article 25 of the Law, there shall be stated, among the technical conditions which are to take the place of the said plan, those provided by Article 15 of these Regulations, and also those necessary to determine the maximum annual cost of operation per kilometer, which is to serve as a basis for the determination of the net profit.

ART. 45. The law of concession being sanctioned and promulgated, the line shall be offered at auction within a period of three months.

The public sale shall take place according to the existing instructions, and in order to take part in it the bidders must deposit beforehand, in the manner designated by the advertisement, a sum equal to 1 per cent of the amount of the estimate approved.

The subsidy fixed shall serve as a basis for the auction, and the object of the proposals shall be the reduction of said subsidy.

ART. 46. If the subsidy consists of the delivery to the company of certain works constructed at the expense of the State and according to the provisions of Articles 7 to 12 of these Regulations, the bidding shall be first on the reduction of the schedules, the auction being held according to paragraph 3 of Article 36 of the Regulations of the General Law of Public Works.

If there be two or more of the most advantageous propositions apparently equal, new bids shall be required, as provided for in Article 37 of said Regulations; and if none of the interested parties make any proposition whatsoever in this new bidding, he who shall have obtained the lowest number in the drawing by lot, which shall have preceded the opening of the proposals in the first bid, shall be declared the best bidder.

The record of the auction being made, and it being approved by the Secretary of the Colonies, he who shall appear as the best bidder in the first and second bids referred to in the previous articles shall be declared the owner of the concession.

ART. 47. If the subsidy consists of the delivery to the company of a part of the invested capital, which part is to be fixed exactly in the law of concession, the auction shall be first on the reduction of the amount of the subsidy, and afterwards, in case of equality of proposals, on the reduction of the schedules; and if there still be equality of proposals,

on the number of years of the concession, all in strict accordance with the provisions for such cases of Articles 43 and 44 of the Regulations of the General Laws of Public Works.

When the subsidy consists of the guaranty of a given interest on all or part of the capital invested in the construction of the railroad, the auction shall be based upon the capital on which the interest is to be earned.

ART. 48. In the third and fourth cases of Article 12 of the Law of Railroads, namely, when the subsidy consists in granting the constructor of the line the right to take advantage of other works constructed for public use compatible with the use of the railroads, or in the exemption of the duties on material of construction or operation, the auction shall be, in the first place, on the reduction of the schedules and then on the reduction of the number of years of concession, proceeding in all matters according to the provisions of Article 46 of these Regulations.

If the subsidy consists in the annual delivery of a fixed sum per kilometer, repayable with half of the gross earnings of operation, the auction shall be based upon the amount of said sum; the maximum rate per kilometer should be fixed beforehand in each case.

ART. 49. The owner of the concession shall deliver at the proper place, and at the time fixed in Article 16 of the Law of Railroads, a bond equivalent to 5 per cent of the estimate approved; the said amount shall not be returned until all the works included in the concession shall have been entirely finished. The bond being given, the construction of the works shall be proceeded with, according to the clauses and conditions of the concession.

ART. 50. If the subsidy consists of works already constructed by the Government, they shall be delivered to the owner of the concession, after making an inventory and appraisal of them, which shall be inserted in the proper record, the owner of the concession signing the receipt therefor.

If the aid consists of the delivery of a sum in specie or bonds and stocks, it shall be paid to the company in the form and time stipulated, always on a certificate of the Engineers of the State charged with the inspection. The payment of the subsidies in these cases shall be made to the company by the Government directly, and the Government in its turn shall be paid by the province and the town the part of the subsidy devolving upon them, as determined by the Law.

When any public work compatible with the use of the railroad is to be delivered to the company owning the concession, the delivery shall be made with all the formalities stated in the first paragraph of this article.

If the subsidy consists of the exemption of customs duties, the formalities determined in the existing provisions or those provided in the future by the proper Law or Regulations shall be complied with.

If the subsidy consists in the guaranty of interest, there shall be

paid semiannually to the company by the Public Treasury of the Island, the difference between the net earnings, after deducting what is provided for in the special clauses of the concession, and the said interest. When, during four consecutive periods of six months, the net earnings of the operation shall equal or exceed the interest guaranteed, the right to such interest shall cease; but the Treasury may continue to collect half of the excess on the said interest, until it shall have been repaid for the advances made, if it has been so stipulated in the special clauses of the concession.

If the subsidy is to be given in the form of an annual advance to be repaid, the Treasury of the Island shall deliver to the company at the end of every six months the difference between the subsidy corresponding to the number of kilometers in operation and half of the gross earnings of the operation during the same period. When for four consecutive months half of the gross earnings of the operation shall exceed or equal the interest, all right in the future on the part of the company to the subsidy shall cease, but the Treasury shall continue to receive the excess of half of the gross earnings over the amount of the subsidy, until all the money thus previously advanced half yearly shall have been repaid, without charging interest on the advances.

ART. 51. The concession of a railroad, to which a subsidy has been granted, shall be forfeited in the cases provided for by the General Law of Public Works and by the Law of Railroads.

Exception shall be made in the cases of force majeure, set forth in Article 29 of these Regulations, which must be proven in accordance with Article 49 of the General Law of Public Works.

In case of forfeiture, from the appraisal which must be made in accordance with the provisions of Articles 33 and 34 of these Regulations, there shall be deducted the amount of the bond, if it should have been returned, the expenses of the appraisement and auction, and the lands, works, money, or other things of value which may have been delivered to the owner of the concession. The remainder shall be the amount for which the completed works and the materials on hand shall be sold at auction.

The provisions of the Law and the corresponding articles of these Regulations shall be followed in all other proceedings for the purpose of declaration of forfeiture and its consequences.

ART. 52. In the execution of the work the owner of the concession shall confine himself to the approved plan, in which no variations or modifications may be introduced, without the proceedings specified in Article 22 of these Regulations. In such case the consequences of the variations authorized shall be those designated in Article 19 of the Railroad Law.

In the execution of the work and in the operation of a subsidized line, the provisions of Articles 23 to 27 of these Regulations shall be observed concerning the plans and documents which must be made on

the completion of the work, the necessity of authorization to begin the operation of the road, the privileges and obligations of the owner of the concession in its operation, and the formalities necessary for a revision of a schedule of rates.

In like manner the provisions of Articles 35, 36, and 37, concerning the formalities with which the railroad shall be delivered at the termination of the concession, shall be observed.

ART. 53. When an individual, or a company, desires the concession of a railroad with a subsidy, he shall direct the proper petition to the Secretary of the Colonies, or to the Governor-General, accompanying the plan, in accordance with Articles 8 and 9, and proving that the deposit of 1 per cent of the estimate has been made.

In the petition there shall appear the kind of subsidy prayed for, stating its amount and the form in which it shall be made, with a full argument, in order to prove the necessity or desirability of the aid which is asked for.

ART. 54. When the documents referred to in the preceding Article have been received, there shall be published, in the Gaceta de Puerto Rico, the proper advertisements, fixing a period of thirty days for the admission of proposals which might be more advantageous than the first.

If the time fixed should pass and no proposition whatever be made, or if those presented should not be admissible, because of the absence of certain of the requirements of the Law or of these Regulations, the plans shall be remitted through the Governor to the Engineer of Public Works, in order that he may actually go over the ground and make the report referred to in Article 18.

Thereon the proceedings provided for by Article 44 shall be instituted, and as a result of the proceedings the approval of the superior authorities may be given to the plan and the other documents.

In case that it should be deemed necessary to introduce any modifications in the plan, or in any of the clauses of the concession, the provisions made for such cases by Article 19 of these Regulations shall be observed.

ART. 55. When the plan is approved, and when the basis of the concession is agreed upon, the appraisal of the studies shall be made, which shall be done in accordance with Article 35 of the Regulations for the Execution of the General Law of Public Works.

ART. 56. The Secretary of the Colonies shall present to the Cortes the proper form of Law, in order that the construction of the railroad may be authorized.

The said proposed Law shall be accompanied by the plan approved for the line in question, with all the other documents necessary to determine the basis of the concession, the schedule of rates, the kind and form of the subsidy which the State shall give, the part which shall be contributed by the interested Province or Municipalities, and the other requisites which are demanded by the Laws and Regulations.

When the Law is promulgated, the concession shall be offered at auction during a period of three months, as provided for by Article 45 of these Regulations; in such case, it must be stated that the author of the plan proposed has a right to the concession on the same terms as the highest bidder, and also that otherwise he shall be paid by the person to whom the concession is granted, the expenses of his plan, in accordance with the appraisal made, in relation to which the provisions of Article 42 of the Regulations for the execution of the Laws of Public Works shall be observed.

The proceedings, rules, and prescriptions contained in Articles 46 to 52 of these Regulations, referring to the case in which the petition for the construction should have emanated from the Government, are applicable in all respects to the case in hand—that is, to the construction by means of a concession of a subsidized railroad, on the request of an individual or a company.

ART. 57. If within the time fixed by Article 54 admissible proposals should have been presented for the construction of a railroad, the provisions of the same concerning going over the plans on the ground and the proceedings which must be had thereunder, shall be extended to them and to the corresponding plans. The Engineer in Chief, as well as those reporting, shall make the comparison in their decisions of the various plans presented, giving their opinion concerning the order of preference in which they should be considered.

Thereafter the opinion of the Consulting Board of Roads, Canals, and Ports, and of the Department of Public Works of the Council of State, shall be taken concerning all matters involved in the proceedings, and as a result of all this the Secretary of the Colonies shall decide which plan should be selected; then proceeding to its appraisal in the manner provided for in analogous cases by these Regulations.

The other plans shall be returned to the authors with the deposits they made on presenting them.

ART. 58. In case the first plan and any other of those thereafter presented should be equally favorable, the first shall have preference, and its project shall be the one appraised and shall serve as the basis of the concession.

When two or more of the proposals made after the first shall be equal, the one which was first presented shall have the preference, and its project shall be the one appraised and shall serve as the basis of the concession.

The provisions of Article 23 of the Regulations for the execution of the General Law of Public Works, shall be strictly observed in such cases, to prevent all doubt concerning the date of the presentation of such plans.

ART. 59. When the plan which is to serve as a basis for the concession, determined by either of the means indicated in the two preceding articles, according to the circumstances, shall have been appraised, the

proper form of Law shall be presented to the Cortes, and concerning the auction or auctions, construction or operation, and delivery of the road, in cases where there is a subsidy, the provisions of Articles 45 to 52 of these Regulations shall be observed.

CHAPTER V.

INSPECTION AND SURVEILLANCE OF RAILROADS.

ART. 60. The direction regarding the construction, operation, and police supervision of the railroads appertains to the Secretary of the Colonies, as well as the surveillance which he shall exercise over them in accordance with Articles 60 and 61 of the Railroad Law, and they shall take their course in compliance with the special instructions which now govern or which may hereafter be adopted, in accordance with the principles laid down in these Regulations.

ART. 61. The inspection which the Government should exercise over railroads is divided into technical or expert and administrative or business inspection. Both classes of inspection shall be conducted by officers under the authority of the Secretary of the Colonies, who may order that the personnel of whatever kind assigned to the inspection, shall depend from the Chief Engineer of Public Works, or that the expert and administrative inspections shall be made by officials independent of each other.

ART. 62. The expenses of the inspection shall be defrayed by the State, or by the railroad companies, according to the stipulation in the clauses of the concession of each line.

In case the companies should be obliged to pay all or part of the above-mentioned expenses, the payment shall be made directly by the State, the sums which for this purpose are paid by the companies shall be credited to the proper items of the appropriation.

ART. 63. The expert inspection shall also be considered divided into two parts, viz, first, that which should be made of the construction, line and works, and technical operation; and, second, that which should be made of the material and traction.

Everything referring to the study, comparison, and examination of the plans, to the construction of the lines, presentation and repair of the work, roadway, fixed material and buildings, to the surveillance of the line, of the signals and switches, and to the make up and velocity of the trains, shall be considered as appertaining to the first division.

The second division shall include everything in connection with the preservation and repair of the rolling stock.

ART 64. The expert inspection shall be made by Engineers of the Board of Roads, Canals and Ports, aided by mechanical engineers, when the Government may deem it proper, by assistants from among the subaltern employees of Public Works, and by watchmen who fulfill the requirements of these Regulations.

ART. 65. The expert inspection shall be made by the Chief of Public Works in charge of the employees mentioned in the previous article, as well as mechanical engineers when their co-operation is deemed necessary by the Government, and they shall be especially in charge of the preservation and repair of the rolling stock.

ART. 66. Expert officers who make the technical inspection shall be appointed by the Secretary of the Colonies, in the same manner as those serving in the Department of Public Works. Mechanical engineers shall be appointed in like manner. Watchmen serving under the expert inspectors shall be appointed from the list of retired soldiers who may have served in expert corps or in the civil guards (guardia civil), provided they receive recommendations for good behavior in their discharge papers.

Employees of this class shall not be removed from the service, except for malfeasance or misfeasance committed therein, after proceedings instituted in accordance with the rules established for that purpose.

ART. 67. All that concerns the business operation, the relations between the public and employees of the company engaged in that branch, to the jurisdiction and supervision which the Government should exercise over these employees, and the safety of travel, in case of attempt to wreck the trains, or in case of public disturbances, is under the charge of the administrative inspection of railroads.

ART. 68. The employees of the Administrative Inspection shall consist of Inspectors and Assistant Inspectors, whose numbers and salaries shall be fixed in the appropriation bills, in accordance with the necessities of the service.

If the administrative inspection be independent of the expert inspection, all the employees of the first shall be under the orders of a Chief Inspector.

ART. 69. Employees connected with the Administrative Inspection shall be appointed by the Secretary of the Colonies in accordance with the present provisions, or with those that shall in the future be adopted, of the Laws and Special Instructions in this connection.

Said employees shall have accurate knowledge of the General Laws of Railroads, of their conditions and schedules of rates under the Law, and the police Regulations of the same, and such directions as may have been issued by the Government and by the companies concerning telegraph service and the business operations of the lines.

ART. 70. Inspectors and Assistant Inspectors in charge of the administrative inspection of railroads, can not be removed except through malfeasance and misfeasance in office, and after the proper proceedings in accordance with the rules established for this purpose.

CHAPTER VI.

RAILROADS DEVOTED TO PRIVATE USE.

ART. 71. Railroads devoted to the service of an industry or to private use, for the construction of which the use of public lands is not required nor condemnation proceedings desired, may be built without

any other formality than a notification to the Governor-General, and may be thereafter operated without any other restrictions than those imposed by the Health Laws and Laws for the public safety, in the manner determined by Article 62 of the Railroad Law.

ART. 72. When an individual or company desires to build a railroad line for the service of a private industry, and needs for that purpose the use of public lands, the interested parties shall present to the Governor-General a petition accompanied by the proper plan.

This plan shall only be in the nature of a memorial explaining it and a description of the route, a general plan and a general profile, the particulars of the public lands traversed by the line, the plans and grades of the construction proposed for said lands, and the approximate estimate of the cost of these works.

ART. 73. The Governor shall open the investigation concerning these works as prescribed by Article 67 of the Railroad Law. The Governor shall hear in this proceeding the Municipal Councils of the towns traversed by the line, the Provincial Deputation, and the Chief Engineer of the Province. Said official shall then send the papers to the Secretary of the Colonies, who, by means of a Royal Decree, may grant the authority asked for after hearing the Consulting Board of Roads, Canals, and Ports.

When the authority is granted, the petitioner may construct and operate the road without other restrictions than those imposed by the public health and public security, and the conditions which may have been imposed in the order granting the authority for the use of public property, which may have been issued.

Before beginning the work, the interested party shall give security equivalent to 5 per cent of the estimated cost of the work to be constructed on public lands, which security shall be returned to him when he proves that he has fulfilled his obligations.

ART. 74. The part taken by the administrative agents in the concessions referred to in the two preceding articles, shall be limited to see that the exact conditions imposed for the building of the work to be undertaken on public lands granted to the owner of the concession are fulfilled.

Authorizations of this kind shall be revoked if the owner of the concession should not absolutely fulfill the stipulations of the order granting the concession; in such case the work done on the public lands shall be destroyed and all material removed, in order that such lands may be clear and in the same condition as they were before the granting of the concession.

The owner of the concession may appeal in an action against the Royal Decree of revocation, but when the latter is affirmed he shall lose the security given, and the lands granted shall again be public property.

ART. 75. For the construction of all railroads devoted to public service, although not of general interest, and for the construction of all

those which, although devoted to a private industry or to private use, may be used by the public, the use of the public domain may be asked for and also the right of condemnation of private lands, as provided in Article 64 of the Railroad Law.

In such cases the company, individual, or interested party shall direct to the Secretary of the Colonies or to the Governor-General a petition accompanied by a plan of the line, in accordance with the provisions of Articles 8 and 9 of these Regulations.

The documents constituting the plan shall be annexed to those which the petitioner considers pertinent to prove the necessity of condemnation, and to a list showing the municipal districts of the property owners whose estates should be occupied.

ART. 76. The Governor-General shall open an investigation which shall treat simultaneously with the consideration of the occupation of public property and of the desirability of the declaration of public utility.

The Governor shall announce the petition in the Gaceta Oficial with a list of the names of those interested in the condemnation, and shall order the petitioner to re-mark the ground, and shall also hear the claims presented before the proper Mayor (Alcalde) by the property owners or their representatives, in accordance with Article 156 of the Regulations for the execution of the General Law of Public Works.

The papers shall then go to the petitioner, in order that he may know and answer the claims presented, and the Governor, after hearing the Executive Commission of the Provincial Deputations, and the Chief Engineer of Public Works shall forward the proceedings, with his own report to the Secretary of the Colonies.

ART. 77. The Secretary of the Colonies shall send the proceedings to the Consulting Board of Roads, Canals, and Ports for report on the technical part of the plan, as well as on the claims and objections that may have arisen, and in order that the basis may be fixed in accordance with which the concession may be granted.

The Secretary of the Colonies, with all these antecedents, shall present to the Cortes the proper form of Law, in accordance with Articles 64 and 68 of the Railroad Law.

After the Law is sanctioned and promulgated, the concession shall be granted, and therefore subject, ipso facto, to all that may be applicable to the provisions of Chapter III of these Regulations, concerning concessions without subsidy.

CHAPTER VII.

FORMALITIES REQUIRED FOR THE CONCESSION OF TRAMWAYS.

ART. 78. No tramway, or railroad established on a public highway, may be constructed without its proper plan being made and approved beforehand.

This plan shall consist of:

1. A memorial giving a description of the tramway, and showing the advantages which would redound to the public interest by its construction.

2. A general plan showing clearly the direction of the route, a general profile showing its grades, and the corresponding detailed plan giving a clear idea of the system proposed to be used on the public highway, in the various conditions in which it may be. If towns are traversed or the tramway be established on the streets of the town, plans on a large scale shall be made of the streets traversed by the line, and its position and relation to the sidewalks and house fronts.

3. The technical conditions in which the works are described, and details relative to construction are given.

4. An estimate.

5. And the schedule of rates to be charged in the operation of the tramway with a calculation of the probable earnings of the company.

ART. 79. The approval of the plan referred to in the preceding article is the attribute of the Secretary of the Colonies:

1. When the proposed tramway shall occupy a State highroad.

2. When it shall occupy a Provincial highroad.

3. When it shall occupy in part a State highroad.

4. When it shall occupy in part a State highroad and in part a Municipal road or street.

5. When it shall occupy both a Provincial highroad and a Municipal road or street.

6. When the motive power shall be other than that of draft animals, whatever may be the kind of public road it may occupy.

ART. 80. The approval of the plan of tramways is the attribute of the Governor-General, when their entire length traverses Municipal roads or streets.

ART. 81. Whenever an individual or company may desire to build a tramway of those designated in Article 79, he shall address his petition to the Secretary of the Colonies or to the Governor, accompanied by the plan referred to in Article 78, proving that he has deposited an amount equivalent to 1 per cent of the estimated costs.

Thereafter, the petition shall be advertised in the Gaceta de Madrid and in the Gaceta de Puerto Rico, fixing one month for the admission of petitions which may be better than the first.

ART. 82. If within the time fixed by the preceding article, no other plan may have been submitted, that presented shall go to the Chief Engineer of Public Works, so that he may go over the plan on the ground of such part as shall occupy a State highroad.

Thereafter, it shall go to the Deputation, through the Governor, in order that the expert Chief of Provincial Works may also go over the plan on the ground, as to that part of the tramway which shall occupy Provincial highroads.

And, lastly, the Governor shall send the plan to the proper Municipal Council or Councils, so that the proper experts may go over it on the ground as to such part of the work which may occupy municipal roads or streets within each Municipal District.

The Chief Engineer, and the Chief Experts of Provincial and Municipal Public Works, who shall have gone over the plan on the ground, shall state whether the data presented is correct, and at the same time shall report on the technical parts, stating whether in their opinion the plan as presented may be accepted, or if there should be a necessity of introducing some modifications.

In the case referred to in this article, and in analogous ones, when the Municipalities do not have the competent personnel to go over the plan on the ground, they may ask of the Governor-General the assistance of the personnel of the State.

ART. 83. When within the period of thirty days, designated in Article 81, there shall have been presented and admitted new plans, these shall likewise go to the Engineers of the State and Provincial and Municipal Expert Chiefs at the same time as the first plan, in order that all may be gone over on the ground, in the manner determined by preceding article.

In such case the report of the Expert Chiefs shall extend to the comparison of the various projects, stating whether anyone deserves the preference, and the reason therefor.

In all cases, the expenses of going over the plans on the ground shall be paid by the petitioner or petitioners who submitted the respective plans.

ART. 84. The reports mentioned in the two preceding articles shall be directed to the Governor, with the plans they refer to, and when these have been received by said authority, he shall order that an investigation be made, as determined in such cases by the General Law of Public Works, the Regulations for carrying it into effect, and Article 87 of these Regulations.

ART. 85. When a tramway which is to occupy a State highroad only, is in question, the Chief Engineer of the Province and the Executive Commission of the Provincial Deputation shall be heard in this investigation, and the Governor shall send the proceedings with his report to the Secretary of the Colonies.

ART. 86. When only Provincial highroads are to be occupied, the Provincial Deputation shall be consulted, which shall make its report after hearing the expert Director of the Corporation; thereafter, the Chief Engineer shall make his report, and lastly the Governor shall make his, on sending the proceedings to his superiors.

When the works are to occupy both State and Provincial highroads, similar proceedings shall be followed, adding the report of the Executive Commission, which shall be heard, after the Chief Engineer.

ART. 87. The Municipal Councils of the towns interested shall first be heard, if the tramway shall occupy in part a State highroad and in

part a Municipal road or street; a public investigation shall be held in said towns for a period of at least twenty days, at which all the residents who may consider themselves interested may take part, stating what they may deem proper. The Municipal Councils, after having first consulted the opinion of the expert Chiefs, shall report. Thereupon, the petitioner shall be heard in order that he may answer the claims which may have been presented. Thereafter, the Chief Engineer of the Province shall be consulted, and also the Executive Commission of the Provincial Deputation; and the Governor shall be the last to report on sending the proceedings to the Secretary of the Colonies.

ART. 88. Whenever both a Provincial highroad and a Municipal road or street are to be occupied, the interested Municipal Council or Councils shall first be heard as provided for by the preceding articles; and then the Provincial Deputation, which shall report after first hearing the opinion of its expert Director. The proceedings shall then go to the petitioner in order that he may answer the objections and claims which may have been made; and after this formality is complied with, the Chief Engineer and the Executive Commission shall report their opinions referring to the legal questions which might have arisen, and lastly, the Governor, who shall send the proceedings to the Government.

ART. 89. When a road in which the motive power shall be steam or compressed air, or any other than animal power, the investigations referred to in Articles 84 to 88 shall take place according to the specific case in compliance with the rules established therefor, embracing in such case the advantages or disadvantages which the motive power proposed may have, and to the conditions which, in a proper case, should be imposed to prevent the damages which might result therefrom to public travel.

ART. 90. When the plans proposed are two or more in number, the investigations shall cover all of them simultaneously, and individuals, officials, and corporations giving information shall state their opinion as to which deserves the preference. In such case the petitioners shall be heard in the investigation in the inverse order of the presentation of their plans, so that the author of the first one presented shall be the last one heard, care being taken by the Governor to fix the shortest possible time for the petitioners to send in their replies, with the object of shortening the proceedings.

ART. 91. In all the cases referred to in the preceding articles, after the proceedings have been received by the Secretary of the Colonies, it shall go to the Consulting Board of Roads, Canals, and Ports for their report concerning the technical part of the plan or plans proposed, as well as the preference which shall be given to one of them, at the same time proposing the conditions in compliance with which, in a proper case, the concession may be granted.

The Secretary of the Colonies shall approve the plan presented in view of the proceedings, if this shall be proper, or the one meriting the preference among those accepted.

If from the proceedings there should result, that to approve the plan it should be necessary to introduce some modifications, in such case the provisions of Article 119 of the present Regulations shall be observed.

ART. 92. When the plan of tramway shall come within the provisions mentioned in Article 73 of the Railroad Law, that is to say, when the works are to occupy a State highroad and a provincial highroad, and finally both State highroads and municipal roads or streets, after approval of the plan in the manner prescribed by the preceding article, its appraisal shall be made as is provided for analogous cases by these Regulations.

ART. 93. The Secretary of the Colonies who has the power to grant the concession, in the cases specified in Article 73 of the Law, shall immediately advertise the auction of the works for the period of two months, on the basis of the approved plan.

The auction shall take place in accordance with the provisions of Article 76 of said Law, respecting the schedules of rates, the equality of propositions as to the duration of the concession, and with the understanding that in all cases the right of legal preference shall be reserved at the auction, to the author of the approved plan, and if the latter should not take advantage of the preference, the successful bidder shall pay him within one month the value of the plan, in accordance with the appraisal made.

ART. 94. If from the investigations to be made there should appear an equality of conditions of two or more of the accepted plans, the one first presented shall have the preference, and in this case it shall be appraised and shall serve as the basis for the auction prescribed by the preceding articles.

ART. 95. When the auction is decided, the declared owner of the concession shall give, within a period of fifteen days, security equivalent to 5 per cent of the estimated cost, as provided for by the law for subsidized railroads. The owner of the concession shall build the works in accordance with the stipulations and under the inspection and surveillance of the State Engineers, in such parts as are occupied by State highroads. In such part as the tramway occupies Provincial highroads, the inspection shall be carried on by the expert Directors of the Provincial Works, and in such part as the works occupy Municipal roads or streets within towns, the inspection shall be carried on by the expert agents of the Municipality.

ART. 96. When the concession expires, the term of which can not be for longer than sixty years, according to Article 76 of the Railroad Law, the Government, the Province, or the towns, shall enter into the enjoyment and use of the part of the tramway built in State, Province, or municipal roads or streets, respectively, in accordance with the special rules laid down in each case, in order to carry out the operation and sharing of the earnings among the interested parties.

ART. 97. The plans and grant of tramway concessions, in which the motive power is other than animal, shall be subject to the same

proceedings as those designated in the preceding articles, in which case the Secretary of the Colonies may always approve the plans and permit the individuals or companies who ask it to construct these roads.

ART. 98. In tramway concessions, made by the Secretary of the Colonies in the manner determined by the Railroad Law, all the provisions contained in Chapter IV of these Regulations concerning concessions of subsidized railroads, shall apply in so far as practicable and do not conflict with the provisions of the preceding articles.

ART. 99. If the tramway is to occupy one or more provincial highroads, after the approval of the plan by the Secretary of the Colonies, in compliance with Article 91, it shall go to the Governor, in order that he may transmit it to the Provincial Deputation which has the right to grant the concession in such case, as provided for by Article 74 of the Law.

The same shall be observed in the case of the occupation of both Provincial and Municipal roads or streets, when the Secretary of the Colonies shall have the power to approve the plan, and the Deputation shall have the power to grant the concession.

ART. 100. The Deputation shall immediately have the approved plan appraised, and shall then advertise the auction, proceeding in all other matters in accordance with the provisions of these Regulations and of the articles which may be applicable of Chapter V of the Regulations of May 21, 1881, which treats of the conditions of the construction of provincial works.

ART. 101. If the tramway is to occupy Municipal roads or streets only, the petitioner shall send his plan, accompanied by a petition, to the Governor of the Province, who in this case has the right of approval, as provided for by Article 71 of the Railroad Law. The Governor shall order the publication in the Gaceta de Puerto Rico of the proper advertisement, fixing a period of thirty days to present proposals which might better the first.

ART. 102. The plan shall then be sent to the Mayor, who shall order it gone over on the ground by the expert Chiefs of Municipal Works, then submitting said plan to a public investigation, directed by the said Mayor, and at which the residents of the town who deem it proper to make objections and claims shall be heard, for which purpose a time, not less than twenty days, shall be fixed.

The Mayor shall then send the result of the public investigation to the petitioner so that he may reply; then the full Municipal Council shall be heard, and with his report he shall finally send the proceedings to the Governor.

If within the period of thirty days mentioned in Article 101, new plans should have been presented and accepted, going over the plans on the ground, the expert report, the public investigations and the public opinions of the Municipal Council and the Mayor shall embrace all the plans admitted, and also concerning the preference which, as a result of the comparison of their respective advantages or disadvantages, one deserves over all the others competing.

ART. 103. The Governor, on the opinion of the Provincial Chief Engineer, shall decide the approval of the plan. When he considers the works of great importance, or when he disagrees with the opinion of the Chief Engineer, he shall send the proceedings with his own report to the Secretary of the Colonies, who shall finally decide after hearing the Consulting Board of Roads, Canals and Ports, as provided for in Article 93 of the Regulations for the execution of the General Law of Public Works.

ART. 104. If the tramway is to occupy Municipal high roads or streets, within a single Municipal District, in which case the Municipal Council has the right to grant concessions in accordance with Article 74 of the Law, the Governor shall send the approved plan to the proper Municipal Council, which, after an appraisal of said plan, shall advertise the auction and grant the concession in accordance with the provisions of Chapter VII of the Regulations of the 21st of May for the execution of the General Law of Public Works.

ART. 105. If the tramway is to occupy roads or streets belonging to more than one Municipality, the plan must be separately submitted to each of the Municipal Districts it traverses, and in each of the towns the study of the plans on the ground and the investigations referred to in Article 102 of these Regulations, shall be made.

The Governor of the Province, as soon as he has gathered the proceedings of the interested Municipalities, shall proceed to the approval of the complete plan in the manner provided for by Article 103.

ART. 106. After the approval of the plan by the Governor in the case stated in the preceding article, the proceedings shall go to the Provincial Deputation, which in such case has the right to grant the concession, as provided for by Article 74 of the Railroad Law.

ART. 107. The Deputation in all other matters shall follow the provisions of Articles 99 and 100 of these Regulations.

ART. 108. Concessions of tramways made by Municipalities by virtue of the Law of Railroads and of the corresponding articles of these Regulations shall be subject, in so far as it is applicable and not in contradiction with what is herein provided, to the provisions of Chapter VII of the Regulations for the execution of the General Law of Public Works.

CHAPTER VIII.

GENERAL CONDITIONS WHICH SHOULD BE OBSERVED IN THE CONSTRUCTION AND OPERATION OF TRAMWAYS.

ART. 109. The Government, hearing the Consulting Board of Roads, Canals and Ports, shall draw a set of general conditions, which shall be observed in tramway concessions, complying with the provisions prescribed in the following articles of the present Regulations.

ART. 110. Every concession of this kind shall be understood to be made without prejudice to third persons, and protecting private rights

according to the provisions of Article 28 of the Regulations for the execution of the General Law.

ART. 111. The security which shall be required from the owners of concessions, shall be 5 per cent of the value of the estimated cost of the approved plan, and shall not be returned until all the works included in the concession shall be finished.

ART. 112. Tramways must always be established in such manner as not to cause damage nor to impede the travel of the ordinary vehicles which pass over the highroads or the streets which they occupy. In consequence, no system shall be admitted in which the rails project above the level of the road, and in the general conditions there shall be determined the minimum width of streets in which the tramway may be built, fixing the position which the rails must occupy, in order that the tram cars may cross ordinary vehicles in movement and those stopping in the highway or in the street loading and unloading. Thus, also, proper rules shall be established in order that travelers on foot may not suffer damage or inconveniences in the road.

ART. 113. That part of the highroad or street occupied by a tramway, or that part of the width which shall be determined, shall be kept in repair at the expense of the owner of the concession, who for this purpose shall renovate and replace the bed and the pavement with material of good quality whenever this may be necessary, in the judgment of the expert agents charged with the inspection.

In the building of the tramway, and in the preservation and repair, care shall be taken to introduce no modification whatsoever, either in the grade of the highroad or streets or in the transverse profile affected by them.

ART. 114. When the tramway shall be of a single track, turn-outs conveniently situated shall be built, in order to avoid any blockade.

ART. 115. The works must be carried out in accordance with the approved plan in which no modification whatsoever may be introduced without the approval of the Secretary of the Colonies, or in a proper case, of the Governor of the Colony.

ART. 116. No tramway shall be placed at the disposition of the public until after inspection by the expert Engineers of the State, of the Deputation, or of the Municipal Council according to the circumstances. These officials shall report the result of their inspections to the Governor of the Province, and if the reports should be favorable, the Governor shall decide that the tramway be open to the public service, reporting to the Secretary of the Colonies in all cases in which the concession may have been granted by that Department.

ART. 117. The company shall operate the tramway during the time stated in the concession, in accordance with the approved schedule of rates, which in no case shall be higher than those fixed therein.

The owner of the concession shall be obliged to assure the travel on his road, excepting cases of force majeure. If the travel should be interrupted from causes imputable to the owner of the concession, the

Secretary of the Colonies, or the Deputation, or the Municipal Council which may have granted the concession, shall adopt the measures conducive to its reestablishment, at the expense of the company.

ART. 118. The company may freely decide on the means of constructing the road, as well as on the selection of the employees appointed for its operation and administration. In the same manner the necessary rules for the public service shall be drawn, notifying the Secretary of the Colonies or the proper authority, as the case may be.

In matters relating to public health and safety, the company shall do what is demanded by the Government and the proper authorities, in conformity with the General Laws and Regulations, and the special police laws of the highroads and Municipal Ordinances of the towns through which the line passes.

ART. 119. At the expiration of the concession the company shall turn over to the proper party in good serviceable condition, the tramway, its dependencies, material and means of traction; and the Government, Deputation, or Municipal Councils to whom the delivery is made, shall enter into the full enjoyment of the income earned by the operation of the tramway.

ART. 120. Besides the general conditions governing the concession of all tramways, other special conditions shall be stipulated which shall contain the provisions relating to the times in which the work should begin and end, the amount of the security, the schedule of rates allowable for the use of the works, duration of the concession, and cases of forfeiture (if any special ones are added besides those provided for by the General Law of Public Works and by the Railroad Laws), with everything else deemed convenient for the good construction of the road and of interest for the public service.

ART. 121. When the motive power employed for the traction is other than animal, it shall be stipulated in the general conditions that the engines, should they be run by steam, shall not produce smoke, nor any special noise which might frighten the horses of ordinary vehicles; that powerful brakes be used in order to stop the train in the shortest possible time; that the speed shall not exceed 20 kilometers per hour on the highroads, and that it shall be moderated until equal to that of a horse at a walk while within the towns, as well as where travel may be very active; that the best system of signals be adopted; and that, in short, there shall be observed all the rules and precautions possible, in order that ordinary traffic may be carried on without impediment and without danger, as well as to avoid accidents of any kind.

In no case shall the change of animal motive power established in a tramway to a different motive power, be authorized without previous permission granted by the Secretary of the Colonies, in accordance with all the provisions of the Law and of the corresponding articles of these Regulations.

ART. 122. The powers conferred by Articles 79, 85, 87, and 97 of these Regulations to the Secretary of the Colonies, shall be understood as delegated to the Governor-General for the approval of plans and granting of concessions, the estimates of which do not exceed 20,000 pesos, in accordance with the provisions of the Royal Decree of August 12, 1885.

Approved by Royal Order of this date.

MADRID, December 14, 1887.

VICTOR BALAGUER.

A true copy.

VASCONI.

O

TRANSLATION

OF

POLICE LAW OF RAILROADS

OF

PUERTO RICO,

AND

REGULATIONS FOR ITS APPLICATION,

PROMULGATED ON THE 17TH OF FEBRUARY, 1888.

WAR DEPARTMENT,
1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

POLICE LAW OF RAILROADS OF PUERTO RICO.

[Promulgated in the Island on the 17th of February, 1888.]

TITLE I.

REGULATIONS APPLICABLE TO PUERTO RICO FOR THE PRESERVATION OF PUBLIC ROADS.

ARTICLE 1. The Laws and Regulations of the Administration as to highways are applicable to—

1. The preservation of trenches, drains, walls, buildings, and other kinds of works.

2. The rights (servitudes) for the preservation of the roads charged on the adjoining cultivated lands.

3. The servitudes on these same lands as to laying out lines, constructions of all kinds, opening of ditches, free course of water, planting, pruning of trees, working of mines, lands, places for dumping refuse ore, quarries, and any other whatsoever. The zone to which these rights extend is 20 meters on each side of the railroad.

4. The prohibitions the object of which is to prevent all kinds of damage to the road.

5. Prohibiting the placing of hanging or projecting objects which may inconvenience or endanger persons or the road.

6. Prohibiting the establishment of deposits of materials, stones, earth, manure, products or any other thing which may impede free transit.

TITLE II.

REGULATIONS FOR THE PRESERVATION OF ROADS WHICH REFER ESPECIALLY TO RAILROADS.

ART. 2. Along the whole distance of the railroad neither the entry nor the grazing of cattle shall be allowed. If the railroad has to cross a highway where cattle pass, the railroad shall always cross without changing or stopping the progress of the trains, and in the manner provided for as a general rule for that crossing.

ART. 3. In the future, in a zone of 3 meters on each side of the railroad, only fencing walls shall be constructed, but no facades having openings or projections. This Regulation does not refer to buildings constructed before the promulgation of this Law, or the construction of a railroad which may be separated and maintained in the condition in which they are, but can not be rebuilt. If it

be necessary to demolish or change a building for the benefit of a railroad, the proceedings shall be according to the provisions of Article 11 of this Law.

ART. 4. Within the zone indicated in paragraph 3 of Article 1, no buildings may be constructed, covered with thatch or other combustible materials, when the railroad is operated by means of locomotives.

ART. 5. The prohibition to establish deposits of materials, earth, stones, or any thing mentioned in the sixth paragraph of Article 1, in the case of railroads, includes 5 meters on each side of the road as to objects not inflammable and 20 meters as to inflammable objects.

ART. 6. The prohibition of the preceding Article shall not be operative when—

1. The deposits of combustible material shall not be higher than the road when the latter is on an embankment.

2. The deposits of materials to be employed for fertilizing and cultivating lands, and harvests during their gathering, are temporary; but in case of fire due to the passing of locomotives the owners shall have no right to an indemnity.

ART. 7. The Governor of the Province may authorize, after hearing the Engineers of the Government and of the Companies, the deposit of uninflammable materials; but the authorization shall be revokable at his will. The Governor may not authorize deposits of inflammable materials.

ART. 8. The railroads throughout their length shall be fenced on both sides. The Secretary of the Colonies, after hearing the Company, in case there be one, shall determine for each line the manner in which and time when the fencing is to be made. When railroads cross others on the same level, gates shall be constructed which shall be closed and only opened when vehicles and cattle cross as provided for in the regulations.

TITLE III.

REGULATIONS AS TO THE PRECEDING TITLES.

ART. 9. The distances fixed in paragraph 3 of Article 1, and in Articles 3 and 5 of this law, shall be measured from the lower line of the walls of the embankment of the railroads, from the upper line of the clearing, and from the outer border of the trenches; if there be no such lines the measures shall be from a line drawn a meter and a half from the outside of the railroad. The Regulations will fix the minimum distance from the stations at which buildings may be constructed or deposits established.

ART. 10. The Secretary of the Colonies, in special cases, may reduce the distances to which the preceding article refers, after the

proper steps are taken showing the necessity or convenience of the reduction, and if no harm is done to the regularity, preservation, and free transit of the road.

ART. 11. Whenever there exist individual rights previous to the construction of a railroad, or the publication of this law, which rights can not be enforced, or if it be necessary to abolish these rights on account of the necessity or utility of the railroads, the rules established in the Law of June 13, 1884, shall be observed as to forcible condemnation by reason of public utility, and also the provisions of the Laws of Public Works and the regulations issued for their execution by the administration.

TITLE IV.

OFFENSES OF OWNERS OF CONCESSIONS AND LESSORS OF RAILROADS.

ART. 12. The owner of the concession or the lessor for the operation of a railroad who shall not comply with the general document of conditions, or the special ones of the concession, or the resolutions for the execution of these clauses in everything referring to the operation of the line, or of the telegraph, or as to navigation or use of all roads or free course of waters, shall incur a fine of 100 to 1,000 pesos.

ART. 13. The owner of the concession or the lessor shall also be obliged to make amends for the errors and damages caused within the time fixed; if he does not do so the administration shall do it, demanding from him the amount of the expenses and attaching the earnings of the stations.

ART. 14. The owners of the concession or lessors of the railroads shall be responsible to the State and to individuals for damages caused by the Managers, Directors, and other employees in the service and operation of the railroad and telegraph. If the railroad is operated by the State, the State shall be subject to the same responsibility in regard to individuals. Let it be understood that what has been stated in this Article is without prejudice to the personal responsibility which Managers, Administrators, Engineers, and all classes of employees may incur, and the discretionary authority which in cases of strikes, disturbances of public order, and conspiracies, appertains to the Government.

ART. 15. The General Government, without intervening in the appointment of the employees of the companies for the service of operating the railroad, may require the company to dismiss the employees whom it may consider dangerous to the safety of passengers and the maintenance of public order.

This dismissal shall be of a temporary character until it is ratified by the Secretary of the Colonies.

TITLE V.

TRANSGRESSIONS AND CRIMES AGAINST THE SAFETY AND PRESERVATION OF RAILROADS.

ART. 16. He who shall willfully destroy or damage a railroad, or place obstacles on it which shall obstruct the free transit or cause the derailing of a train, shall be punished with imprisonment. In case the train has been derailed, the imprisonment shall be in the penitentiary.

ART. 17. In case the destruction or damage is caused in time of rebellion or sedition, and the authors of the crime do not appear, the principal authors or leaders of the sedition or rebellion shall incur the penalty imposed in the previous article.

ART. 18. The provisions of the preceding articles shall be understood to be without prejudice to the civil and criminal liability which the guilty parties may incur, for crimes of homicide, wounds, and injuries of all kinds which may occur, and for those of rebellion and sedition.

ART. 19. When two or more penalties concur, the Judges and Courts shall impose the greater in its maximum degree.

ART. 20. Those who threaten the commission of a crime included in Articles 16 and 17 shall be punished with the penalties provided for in Article 512 of the Penal Code of Puerto Rico. The scale therein established shall be observed, but always imposing the maximum degree, and when the degree shall be fixed, the next highest one in its minimum degree.

ART. 21. Whosoever through ignorance, imprudence, or by reason of negligence or failure to comply with the Laws and Regulations causes in the Railroad or its dependencies some damage which may injure persons or property, shall be punished, according to Article 592 of the Penal Code of Puerto Rico, by reason of gross negligence.

ART. 22. The engineers, conductors, brakemen, station masters, telegraph operators, and other employees charged with the service and care of the line, who abandon their respective posts while on duty, shall be punished with the same penalties. But if some injury is occasioned to persons or things they shall be punished with the penalty of correctional imprisonment or minor imprisonment.

ART. 23. Those who interfere with the Railroad employees while these are doing their duty, shall be punished with the penalties which the Penal Code imposes on those who resist the agents of the Government.

ART. 24. Those who violate the Regulations included in Titles 1 and 2 of this law, the Regulations of the Administration, and the orders of the Governors as to police, safety, and operation of

Railroads, shall be punished with a fine of 6 to 60 pesos, according to the gravity and circumstances of the case and its perpetrator. If according to the Penal Code they have incurred a graver penalty, only the latter shall be imposed. In case of recurrence of the crime, the fine shall be from 12 to 120 pesos.

ART. 25. Those not paying the fine imposed upon them shall be liable to execution against the person, according to the provisions of Article 49 of the Penal Code of Puerto Rico.

ART. 26. Without prejudice to the penalties stated in the preceding articles, those who shall have infringed the Regulations of this Law, shall destroy the excavations, constructions, and covers, take away the deposits of inflammable material, or of any other kind which may have been made, and repair the damages occasioned in the Railroads. The Mayors shall fix a time for the performance, after hearing the representative of the Administration of the Railroad, or the Company itself. If within the time fixed this shall not be done, the Government shall do it at the expense of the party who shall have disobeyed. In this case the collection of the expenses shall be made in the same manner as that of the taxes.

TITLE VI.

PROCEDURE.

ART. 27. Those who shall commit crimes punishable under this law shall be tried in the ordinary way, whatever be their right to other trial.

ART. 28. Those who shall have only incurred a fine, shall be excepted from the provisions of the preceding article. For the imposition of the fines the following Rules shall be observed:

1. The right to inform belongs to the people.

2. The denunciations shall be made to the Municipal Judges in whose districts the transgression was committed.

3. The proceedings and steps in these actions shall be the ones provided for in cases of common transgressions.

4. The testimony of those in charge of the management of the road and the sworn guards shall be sufficient, except when there is evidence to the contrary.

5. Municipal Judges shall see to the fulfillment of the penalties imposed in these cases.

ART. 29. The penalties imposed on the owners of the concessions or lessors of the Railroad in the cases mentioned in Article 12 may only be imposed by the Governor after hearing the interested parties, the Chief Engineer of Public Works, and the Council of

Administration which hears disputes. The fines imposed by the Governors on the owners of concessions or lessors of Railroads shall not be remitted but by the Colonial Department, after hearing the Council of State.

Approved by the Royal Decree of this date.

BALAGUER.

MADRID, *July 13, 1888.*

REGULATIONS FOR THE APPLICATION OF THE POLICE LAW OF RAILROADS OF THE ISLAND OF PUERTO RICO.

[Promulgated on the 17th of February, 1888.]

CHAPTER I.

ARTICLE 1. The inspection and supervision of the Railroad, not only in its technical part but also in the business part, the direct intervention in the different branches of its operation, its police and good government, and everything concerning the safety of persons and the development of the material interests, belong to the Colonial Department.

ART. 2. The purely technical or professional parts shall be intrusted in each line to one or more Engineers of the Corps of Roads, Canals, and Ports; the administrative and business part to the officers elected by the Colonial Department. Of both branches two inspections shall be created independent one of the other, and both devoted to the best public service with different obligations and duties. They may also be consolidated.

ART. 3. The organization, rights, and duties of the technical and administrative inspections shall be in accordance with the provisions of the special Regulations which may have been ordered for the service of the same, or may be ordered in the future by the Colonial Department.

CHAPTER II.

THE ROAD AND ITS PRESERVATION.

ART. 4. The erection of dams, wells, and troughs at a distance of less than 20 meters on each side of the Railroad is prohibited. This distance of 20 meters shall be measured from the lower lines of the walls of the embankments, from the upper line of the clearing, and from the outer edge of the trenches when the Railroad is on a level. When these lines do not exist, the distance of 20 meters shall be counted from a line parallel to the outer rail at a meter and a half from it.

ART. 5. The farmers on the land adjoining the road shall incur the penalty provided for in Article 24 of the Law whenever by their plantings, works of cultivation, or in any other manner inclosures or the supporting walls, the braces of the culverts, the abutments of the bridges, and other works of the railroads are damaged.

ART. 6. Article 24 of the Law shall be applied equally, not only to the farmers who, in the labor of improvements of their fields

adjoining the Railroad, shall throw in the trenches earth, manure, leaves, or any other material which may prevent the free course of the waters, but also to ranchmen who in the care, grazing, or driving of their cattle, cause the same damage.

ART. 7. The owners or lessors of lands adjoining railroads shall not—

1. Obstruct the free course of waters proceeding from the Railroad by constructing ditches, roads, or bypaths, or by raising their embankments.

2. Cut trees within a zone 20 meters on each side of the Railroad without a previous license from the local authority, and examination by the technical experts.

3. Pull out roots or remove the earth in the slopes or lands adjoining the road, which may cause a breaking of the land, and directly or indirectly may obstruct or embarrass the transit. The work necessary for the repair of these damages shall be made at the expense of the offender without prejudice to the penalties which he may have incurred according to the previous articles.

ART. 8. The owners or conductors of vehicles, horses, or other cattle may not, even to enter adjoining lands or to leave them, cross the Railroads but by such points fixed for that purpose. This prohibition includes also owners or drivers of carriages, shepherds, and cattlemen who leave their horses or cattle at liberty, and graze them in the zones adjoining the Railroad.

ART. 9. No sheds, covers, stands, or movable stands shall be allowed in the zone of the Railroads, even for the sale of food, if their owners have not previously obtained the proper license from the competent authority.

ART. 10. Whosoever willfully or by omission or negligence, shall damage or destroy, with his cattle or vehicles, the works or dependencies of the Railroads, such as parapets, the copings or walls, the kilometric posts, telegraph posts, wires and insulators, signal posts, signs, time tables for the public, and the pipes and water deposit, shall incur the penalty stated in Article 21 of the Law.

This Article is also applicable to those who, without proper authority, shall cut or destroy trees planted in the zone fixed in Article 4 on each side of the Railroad.

ART. 11. Nobody, without previous authorization, within the zone of 20 meters, measured in the manner stated in Article 4, shall construct dams or works, open canals for taking or leading waters, erect buildings, walls, culverts, or other works.

This zone of 20 meters shall be measured at the stations from the inclosure or boundary which limits the land belonging to the station.

ART. 12. The petitions for construction or rebuilding in the Railroad zones shall be addressed to the Alcalde of the respective towns, stating the place, object, and details of the proposed work.

The Alcalde shall send them immediately, with his report and the observations which he may deem proper, to the Engineer in charge of the technical inspection, and he, after an examination and a hearing of the Company, shall determine the distance between the road and the work, fixing the alignment and the precautions and technical conditions, which must be complied with in the construction.

It is obligatory for the interested parties to submit the plans of the work to the Engineer in charge of the technical inspection whenever he shall deem it convenient to examine them.

ART. 13. If the Engineer and the Alcalde agree as to the proposed constructions in the zones of the road, the Alcalde shall immediately grant the license requested.

When they disagree, and the interested party objects to the conditions proposed by the Engineer, the proceedings shall pass to the Governor of the Province, who, after hearing the Executive Committee of the Provincial Deputation and the Chief of Public Works, shall determine on what he may deem best.

In case any of the parties shall be dissatisfied with his decision, the Secretary of the Colonies shall decide, finally, through the Government channel, without any further appeal.

ART. 14. After the report of the Engineer in charge of the technical inspection, the Alcalde shall order the works to be demolished which may have been constructed in the zone of the Railroad without the proper license, as well as those constructed after the granting of the license which do not fulfill the required conditions.

ART. 15. If the houses and other buildings erected in any part within the zone of easement of the Railroad, measured in the form provided for in Articles 4 to 11, and especially if the wall at the sides of the road shall threaten to fall, the Company shall immediately inform the Engineer, so that he may immediately proceed to the examination.

If this examination shows its bad condition or unsafety, the Engineer shall inform the Alcalde, stating whether the ruin is or is not imminent, and whether the building is among those the wall of which must be moved back.

ART. 16. The prohibition imposed by Article 3 of the Law to erect within 3 meters distance, any other construction but a wall or fence, also includes a prohibition to open in it doors, windows, or any other openings which may face the road.

ART. 17. The plans of those works which may cross the road or impose an easement thereon more or less directly, shall be submitted

to the approval of the Secretary of the Colonies, who shall decide, after hearing the Company, the Engineer in Chief of the Public Works, and the Governor of the Province.

ART. 18. By all possible means, the Company shall assure—

1. The maintenance in good condition of the Railroad and all its appurtenances.

2. The care and service of the gates in the level crossings.

3. The supervision and proper work of the switches in the changes and crossings of the road, and in the signals adopted, in daytime as well as at night.

4. The lighting of the stations and level crossings, which the Governor General shall order from the setting of the sun to the time of running the last train.

5. The lighting of the tunnels, which shall also be determined by the Governor, and which shall be constantly lighted while the road is in operation.

ART. 19. For the more exact fulfillment of the previous article there shall be, at all the points deemed necessary, road keepers, switch tenders, and watchmen, day and night, in sufficient number for the safety of the trains and the success of the service.

During the service of these employees, they shall never abandon their post, without express authority of the chief on whom they depend, and without having been substituted.

ART. 20. When, in the opinion of the Governor General, the means employed by the Company are insufficient to assure the safety of the service, he shall adopt, of his own accord, after hearing the Company, the measures which in each case he may deem proper and which public interests demand.

ART. 21. The technical inspection, in agreement with the company, shall organize in the most convenient manner the service and police of the gates.

ART. 22. Whenever it is necessary for the maintenance of the works, or safety of persons or merchandise, to open outer ditches, erect defenses and trenches, or to commence other works of the same nature, the company shall proceed immediately to make them at the points designated by the Government.

ART. 23. The Engineer of Public Works, when the owner of the concession or lessor within the fixed time shall not repair the damages, or shall not have the works completed, shall, after the order of the Governor General, repair said damages or injuries or do the work necessary under the administration system. The Governor shall order the attachment of the funds of the neighboring stations to meet the payment of the said works or repairs. A receipt for the funds attached shall be given to the station masters. These documents shall be afterwards exchanged for the verified accounts

of expenses in the form in which the works of the State are vouched for. If there be opposition to the seizure of the funds, aid shall be asked of the Governor of the Province, who shall give it, even if it be with the troops at his command.

ART. 24. The division of the line in kilometers, the levels, the radii and lengths of the curves, shall be fixed according to the provisions ordered by the Secretary of the Colonies. They should be, whenever possible, on the right of the road, and starting from San Juan de Puerto Rico, and from the coast toward the interior.

CHAPTER III.

STATIONS.

ART. 25. Every station shall have on its principal facade an inscription stating its name, and a clock for the regulation of the service of the same and the movement of the trains.

All the clocks of the line shall be regulated daily by the time of the meridian of San Juan de Puerto Rico, whenever the line connects with that Capital without a break; and if there be a break, they shall be regulated by that of the most important station.

All the crossings for pedestrians, vehicles, and horses shall also have signs, so that all the bureaus, offices, warehouses, workshops, and other dependencies of the Company may be known.

ART. 26. Any ticket with changes or erasures shall be refused as worthless.

ART. 27. The Railroad administration, to insure the safety of baggage, packages, or merchandise, shall issue to their owners, or those in charge of them who may represent the owners, proper receipts, stating therein the name and kind of package delivered, the transportation rate charged, and any other matters which may be considered necessary for the better carrying out of the service.

In these receipts the time, according to the Regulations, within which the baggage, packages, or merchandise are to reach their destination must be stated.

ART. 28. In the most public places in each station, the announcement of the office hours, as well as the hours for the sale of tickets, as also the time-tables and rates, shall be constantly on view.

ART. 29. All the stations shall have a superior chief, to whom all the other employees of the stations shall be subordinate.

ART. 30. There shall be in the stations designated by the Governor General—

1. Departments for the officers of inspection and telegraph.

2. A depository in the manner determined by the Company, where lost articles belonging to travelers shall be taken care of.

3. A medicine chest, bandages, and other things needed in case of accident.

ART. 31. The Governor General shall have power to adopt all the proper measures for the best order and policing of the station, the entry, movement, and stoppages in the yards of public and private conveyances used to transport passengers and merchandise, and must inform the Colonial Department, so that it shall confirm, reform, or revoke the orders that have been issued. All privilege and favor of common carriers as to entry, movement, and stoppage in the neighborhood of the stations are prohibited.

CHAPTER IV.

MATERIAL EMPLOYED IN THE SERVICE.

ART. 32. The number of locomotives, tenders, and other vehicles to be used in the service shall be determined in the document of the conditions of the concession. If, for the best public service, it be necessary to increase the material, the Secretary of the Colonies, after hearing the Company, shall take such action as may be proper to obtain it.

ART. 33. The locomotive shall always be provided with all the necessary apparatus to prevent all danger from fire, and shall never be used until after examination by the technical inspection. When, because of wear or any other cause, a locomotive shall have been withdrawn from use, it shall not be again employed, even after repairing it, without an examination by the technical inspection and express permission.

ART. 34. The axles of locomotives, tenders, and other rolling stock of the Company shall be wrought, strong and compact, of smooth surface, without ridges or indentations, and perfectly adapted to the service to be rendered.

ART. 35. In case cast wheels are used, they shall be massive, and must be cast in a metal mold. The Government may prohibit the use of such wheels when, after trial, it shall appear that they may cause accidents imperiling the safety of the passengers.

ART. 36. All the Companies shall state, in a numbered registry, the locomotives in use, stating the day they began service, the work done, the repairs or changes made, and the successive renewal of the different parts. In these statements shall also be included the observations and remarks deemed necessary to form the statistics of the material in use by the Railroad.

ART. 37. In other special and different registries from those stated in the previous article, a statement shall be made showing the details of the axles of the locomotives and tenders, stating in the margin the number of each one, the manufacturer thereof, the day they were first used, the tests to which they were submitted, their constant and periodic work, and the accidents and various repairs. For this purpose each axle shall have its number engraved thereon.

These registries, made with the greatest possible care, shall be presented by the Companies to the Engineers in charge of the technical inspection whenever they may deem it proper to examine them.

ART. 38. Only the persons employed for the purpose by the Company shall fire locomotives. When ready for use, the engineer or fireman shall constantly remain on the platform of the locomotive wherever it may be, on the main line or branches.

ART. 39. The tenders, besides the conditions of solidity and safety, shall have the necessary capacity to contain greater quantities of water and fuel than those which the accompanying locomotives can consume during the run from one deposit to another. They shall also have the necessary room to carry a box of such tools and implements as may be determined upon.

ART. 40. The vehicles to be used for the transportation of passengers shall not be used without the authorization of the technical inspection. This authorization shall be granted when, in accordance with the provisions of the Government, they shall be acknowledged to have all the requisites for the safety and comfort of the passengers.

ART. 41. The place assigned to each passenger shall be at least 45 centimeters wide, 65 centimeters long, and 1 meter 45 centimeters high, measured from the seat. In the interior of all passenger cars there shall be a sign stating not only the number and letter of the car, according to its class, but also the number of its seats, the divisions being clearly made; and also a frame containing such part of these regulations as refer to passengers.

ART. 42. All locomotives, tenders, and cars of a train shall have—

1. The name or initials of the Railroad to which they belong.
2. Their regular numbers.
3. If they be passenger cars, the class to which they belong.

ART. 43. The Company shall constantly keep in good condition the rolling stock, in proportion to the extent and especial needs of the line.

ART. 44. The Administration shall have exclusive jurisdiction of all appeals which may arise against the decisions of the technical inspection, the object of which shall be to abandon that part of the stock which is useless, to order necessary repairs, and to adopt such measures as may be required for the good order and safety of the service.

CHAPTER V.

FORMATION OF TRAINS.

ART. 45. The Governor General, at the request of the Company and within the provisions of the concession, shall determine for

the different points of the line, and as the circumstances may require—

1. The speed.
2. The maximum number of cars.
3. The maximum of weight to be carried in freight trains.
4. The number and weight of the cars with brakes, and the place they are to occupy in the train, the last car in a train being necessarily of this kind. The Governor shall report to the Colonial Department concerning the carrying out of these provisions.

ART. 46. Every engineer running an engine shall have the necessary means to make such signals as are provided for by the Regulations.

ART. 47. The number of passenger cars of each train shall be in accordance with the regulations governing the running of the same. Nevertheless, all necessary trains shall be run so as to enable all those who desire to travel to do so. A special order shall determine the maximum number of cars which shall form a train, in case there are two tracks.

At different points of the line depots of cars shall be established, the trains being completed with these cars when the number of passengers and the best public service demand it.

ART. 48. The locomotive shall always be at the head of the train. Nevertheless this order may be changed, if convenient, in order to facilitate and render safer the necessary movements in the vicinity of the stations and in case of necessary aid to another train. In these cases the speed shall not exceed 16 kilometers per hour.

ART. 49. In placing the cars forming passenger and mixed trains, the orders issued by the Governor General shall be carried out, after hearing the Chief Engineer of Public Works of the Island, and also the Company, and after informing the Colonial Department.

ART. 50. Only in conformity with the instructions given by the Colonial Department, and under such conditions as it may deem proper, may the cars of common carriers form part of the trains.

ART. 51. The carrying in passenger cars of all material which may cause explosions or fires is prohibited.

ART. 52. The cars and wagons which go to make up a train, shall have couplings at the same height, and the centers of these at equal distances, so that they may be coupled without difficulty.

ART. 53. The couplings of cars shall always be kept perfectly clean and oiled.

ART. 54. Every train shall be drawn by a single engine, except in cases of aid on account of damage or other serious reason,

when another engine may be employed, as well as in cases where the Company shall have been previously authorized by the Government.

ART. 55. More than two fired locomotives shall never be placed in a passenger train, and, in general, they both shall be placed at the head of the train, although in special cases, and always with the authorization of the Colonial Department, a different disposition may be made. At the head and following the tenders, there shall be one or two cars which do not carry passengers, according to whether one or two locomotives are attached. At the end of the train another car without passengers shall always be placed, unless the company is authorized by the Government to leave out the end car.

In the passenger trains there shall always be a car with a water-closet. The end car may be omitted whenever continuous automatic brakes are used on the whole train.

ART. 56. In a special registry, the causes which may have occasioned the employment of two engines in the same train shall be stated, whenever the Company is not authorized to do so, also stating the time thus employed and the reasons justifying it. Those charged with the surveillance of the service may examine these reasons and other memoranda referring to it, whenever the best public service demands it.

ART. 57. In due time and after full inspection, the engineer shall satisfy himself that the locomotive and tenders in his care are in good serviceable condition, and are provided with the necessary spare parts.

ART. 58. The chief of the trains, immediately on receiving them, shall examine them with the greatest care, so as to be sure that they are ready for service.

ART. 59. When there is insufficient freight in the car of the chief of the train, it shall be filled with ballast. The weight of this ballast shall be fixed by the Governor General for each line, after hearing the company and the Chief of Public Works.

ART. 60. The chief of the train, the brakeman, and the engineer, shall be, as far as practicable, in communication during the run, so as to be able to give the signal of alarm in case of accident.

ART. 61. The train once running, shall carry the lights and signals provided for in the Regulations of August 8, 1872, in force in Spain, and which are now extended to Puerto Rico, or those Regulations which may in the future be provided for by the Colonial Department, after hearing the Companies.

ART. 62. The passenger cars shall be lighted inside at night, and also during the day, when going through the tunnels determined

by the Government, all preparations being made for that purpose in the nearest station, according to the run.

ART. 63. Before a train moves, the employees who are to go with it shall punctually occupy their proper places, and in due time the chief of the station shall give the signal which advises them to take their places, the engineer finally repeating it with a whistle.

ART. 64. At such points on the line as the Colonial Department, after hearing the Company, shall designate, there shall be engines for aid or in reserve, always fired and ready for service, by day as well as by night.

ART. 65. A special Regulation drawn by the Government, after hearing the Companies, shall determine the service of locomotives, specially devoted to aid, without loss of time, the trains delayed, or in difficulties, for any reason whatsoever.

At the point in the station where the auxiliary locomotives are placed, there shall always be a repair car with the tools and outfit which, in the opinion of the Governor, are considered necessary.

The trains which may be used for the speedy aid of passengers and train in case of accident, shall also have a repair car.

CHAPTER VI.

PROVISIONS AS TO THE RUN, AND STOPPAGE AT INTERMEDIATE STATIONS, AND ARRIVAL OF TRAINS.

ART. 66. At the request of the Companies, the Colonial Department shall determine the running of the trains, and of single engines on double-track roads, as well as the turn-outs in single-track roads.

ART. 67. No train shall start from the station before the hour designated in the time-table.

ART. 68. The existing provisions, or those which may hereafter be adopted by the Colonial Department, shall be enforced, as to the time which must elapse between the starting of a train, to the next one which must follow according to the schedule. In the time between the two trains, no other trains or single engines shall be allowed to leave, except in cases of aid and succor, or when the Company shall be properly authorized therefor by the Government. In the vicinity of the stations, signals shall be placed, which shall immediately inform the engineers whether or not they may bring their locomotives into the station. The engineer shall stop the train as soon as he observes the signal to do so.

ART. 70. Only in case of accident, or force majeure, or repair of the line, shall the train stop on the line.

ART. 71. The existing provisions, or those hereafter adopted by the Colonial Department, shall be enforced, after hearing the Companies, to determine—

1. The special measures of precaution and safety which may be deemed necessary for the running of trains on grades, tunnels, and curves.

2. The highest speed of passenger and freight trains on the different sections of the line.

3. The time which must be employed to make the trip.

4. The precautions which should be adopted for the dispatch and running of special trains.

ART. 72. When a company shall decide to run a special train, and shall advise the engineer in charge of the inspection, stating the reason of the run and the hour of departure, the company shall be held responsible for any accident which may occur.

The departure of these special trains shall be announced by telegraph to all the stations.

ART. 73. Whenever for any reason the train or single engine stops on the line, signals indicating it shall be placed 400 meters on either side of this point.

ART. 74. The signal system shall conform with the provisions of the existing Regulations, or those which may hereafter be issued by the Colonial Department, after hearing the Companies.

ART. 75. At a distance of 300 meters from a crossing with another railroad or tramway, the engineer shall slow up so that he may make a full stop before reaching that point, if the circumstances demand it.

ART. 76. The Colonial Department, after hearing the Company, shall designate the points where signals are to be placed, showing the direction in which switches are turned.

ART. 77. When the trains shall approach the stations where they must stop, the engineer shall regulate the speed at such distance as he may deem proper, so that it shall not pass the station platform where the passengers are to alight. He may also, according to circumstances, stop the locomotive before reaching said point, afterwards reaching it by running it again.

ART. 78. The engineer shall slow up his engine, not only in large cuts where there are curves, but also at other points of the line which do not permit a large surface of the road to be seen.

ART. 79. When, because of unavoidable accident, the locomotive shall run with the tender ahead, whether alone or with the train, the engineer shall take the greatest precautions, the speed in such cases not exceeding 20 kilometers per hour.

ART. 80. When the engineer approaches stations, grade crossings, curves, cuts, or tunnels, he shall sound the steam whistle to

announce the approach of the train. The same signal shall always be repeated when there is doubt as to whether the line is completely clear.

ART. 81. On the arrival of the train at stations, their names, and the time of stoppage, shall be repeatedly and loudly announced.

ART. 82. While the trains remain in the stations they shall be in charge of the station master, who shall, therefore, be responsible for whatever happens in the station.

ART. 83. The chief of the train, on the run, is chief of all the employees thereon, including the engineer and fireman.

ART. 84. When two locomotives draw the same train, the person who has charge of the first shall regulate the run.

The second locomotive shall act only as additional force, and as a mere auxiliary.

ART. 85. The engineer who runs a locomotive without a train shall always do so on his own responsibility, and the fireman shall obey the signals ordered by him in accordance with the Regulations.

ART. 86. The engineer and fireman in charge of the service shall be the only ones on the locomotive.

From this prohibition are excepted the Engineers in charge of the technical inspection, their assistants who have an order or authorization of a chief, and the agents of the Company duly authorized for the purpose.

In every case special care shall be taken that the number of persons shall never be in the way of the handling and best service of the engine.

ART. 87. The Colonial Secretary shall designate the stations in which records of the delays of trains shall be kept, as determined by each Company. In these records the nature and make-up of the trains shall be stated, the numbers of the locomotives drawing them, the hours of departure and arrival, and the causes and duration of the delay.

The agents in charge of the inspections may examine these records whenever they may deem it proper for the better fulfillment of their duties.

ART. 88. By the quickest and most expeditious means at his command, the chief of the train in operation shall advise the master of the next station of any accident which may occur.

The station master shall immediately communicate with the engineer in charge of the inspection of the line, or with his subordinate, and, in a proper case, with the superior authority of the locality.

ART. 89. The urgent measures adopted by the Governor General, proposed by the Chief of Public Works, and referring to the safety

of the trains, shall be obligatory for the Companies when said measures shall have been communicated to the directors.

ART. 90. Thirty days before the date on which it is to go into operation, a sufficient number of copies of the schedule of all trains shall be sent to the Chiefs of the technical and administrative inspection, who, with their report, shall send them to the Governor General within the next ten days, for his approval, in order that he may make the changes which he may deem proper.

ART. 91. Before approving a new schedule of trains for a line the Railroad Companies which are affected thereby must agree, and the consent of the Governor General must be previously obtained; and he shall hear the Department of Communications in reference to the service of the trains which are to carry the Government mail.

ART. 92. If the Governor General, on receiving the schedule of the trains, shall allow the thirty days designated in Article 90 to elapse without giving any answer whatever to the Company, the latter shall put it in force, considering it approved.

ART. 93. When a new system in the service of the Railroad shall be adopted, or the one established shall be partly changed, the public shall be notified at least eight days in advance not only as to the hours of departure of the trains and of their arrival at the stations, but also of the points at which they are to stop.

CHAPTER VII.

PROVISIONS AS TO PASSENGERS AND PERSONS NOT IN THE RAILROAD SERVICE.

ART. 94. The entrance into Railroads is generally prohibited to all persons not employed in the service. From this provision are excepted—

1. The superior authorities of a Province.
2. The local authorities.
3. The engineer and other employees charged with the surveillance of the road.
4. Soldiers and customs officers and police agents, when they come with the express permission of the proper authority in order to perform some service.
5. Persons obtaining permission from the Company.

ART. 95. The passenger who does not present his ticket entitling him to occupy a seat in the train, or, having one of a lower class, occupies one of a higher class, shall in the first case pay double fare, according to the schedule of rates, and in the second case twice the difference between fares, computed from the station at which he entered the train to his destination. If the passenger does not prove where he entered the train, the double fare shall be estimated by the distance from the place in which the last examination of tickets was made.

ART. 96. In case a passenger goes beyond the place indicated in his ticket, he shall only pay the excess corresponding to the greater distance traveled, provided he informs the chief of the train before starting from the station stated in his ticket.

If this notice shall not have been previously given, he shall pay double the amount of the excess of the distance which he may have traveled without a ticket.

ART. 97. The passenger who, on account of the lack of cars, shall be obliged to go into one of a higher class than the one to which he is entitled by his ticket, shall pay nothing to the Company on account of the higher fare.

If, on the contrary, he may be obliged to occupy a seat of a lower class, the Company shall refund to him the amount of his ticket as soon as his trip ends.

ART. 98. It is absolutely prohibited—

1. To enter or leave the cars by any other exit than that opening onto the platforms.

2. To go from one car to another, unless there be a connection between them; or to lean out of the car while it is in motion.

3. To enter or leave the cars except at stations and when the train shall have come to a complete stop.

4. To enter the cars while the train is in motion.

5. To admit into the cars more passengers than can be provided with seats.

ART. 99. No intoxicated person shall be permitted to enter the cars, nor anyone carrying loaded firearms, or packages which, because of their shape, size, or bad odor, may inconvenience the passengers; nor shall any person with a firearm be permitted on the platform, without first proving that it is not loaded.

ART. 100. Passengers have a right to compel the ejection from the car, by the employes of the Company or of the Government, of anyone misbehaving, or who, by word or action, is offensive, or shall interfere with the orders established, or occasion disturbances or quarrels, as well as those who smoke in a car not reserved for smokers.

ART. 101. The Company shall always reserve one or more first-class sections in passenger trains for ladies who, traveling alone, may request it, and another section in which smoking shall be allowed.

These sections shall be designated by signs stating their reservation.

ART. 102. Dogs are not allowed on passenger cars; nevertheless the Company may admit, in special cars, persons who do not desire to part from their dogs, whenever the latter are muzzled.

ART. 103. If any passenger violates the provisions of these Regulations, the agent of the administrative inspection, or in his absence the station and train chief, shall warn him in due season, and when the gravity of the case demands it, institute the proper investigation, in order to establish the facts.

ART. 104. In order that the passengers may make their claims, not only against the Company, but against its agents and employees, there shall be in each station a registry, which shall be inspected every month by those in charge of the administrative and business inspection.

CHAPTER VIII.

RECEIPT, TRANSPORTATION, AND DELIVERY OF BAGGAGE AND MERCHANDISE.

ART. 105. The objects which are transported by Railroads are classified, for the purposes of these Regulations, as follows:

1. Baggage.
2. Parcels.
3. Merchandise.
4. Cattle of all kinds.

ART. 106. Baggage is understood to include clothing, or things for immediate use, destined for the shelter, ornament, or cleanliness of passengers; books or tools of trade or profession, contained in trunks, chests, valises, small chests, boxes, hat boxes, satchels, saddlebags, hand bags, pillows, or under any covering whatsoever, or unpacked.

ART. 107. Baggage shall be transported in the same trains which carry its owners, and shall be delivered to them at the end of the trip.

ART. 108. Parcels are understood to be all the packages which, without being subject to a declaration of contents, require special care and are transported with the same speed as passengers.

ART. 109. All the things which are not included in the classification of the previous articles, are designated under the general name of merchandise.

ART. 110. The fourth classification comprises cattle, hogs, sheep, goats; draft, burden and saddle animals; dogs, and other domestic animals, and domestic and pet birds in cages or boxes with slats.

ART. 111. Whosoever sends merchandise to the railroad stations shall make a previous declaration as to the number of packages, weight, class, and quality.

Special precautionary measures shall be adopted for the transportation of such merchandise as may cause explosions or fires, or the deterioration or contact of which may damage others, more or less.

ART. 112. Every delivery made in the place designated for the proper employees of the company to receive articles to be transported shall be considered as a proper delivery and legally made.

The subordinate employees exclusively occupied in manual labor and the mechanical laborers in the offices and stations shall not be considered as such proper employees.

ART. 113. The Company shall be obliged to make a bill of lading of the parcels brought to it; and for this purpose the Company shall keep numbered stub books; one in which the articles to be transported with the same speed as passengers shall be noted; another in which a record shall be kept of the articles to be carried in freight trains.

In both, the weight and the rate of transportation of the articles shall be stated, in the same order of dates as they are entered in the registry, unless the sender willingly consents to waive this privilege.

At the time of delivery a stub shall be given to the sender or the person in charge of the article, in which the number, class, weights, rate of transportation, and time in which it is to be delivered shall be stated.

ART. 114. The responsibility of the Company as to delivery, to which the previous article refers, commences from the moment in which the Company has taken charge of the merchandise, in the place where it is to be received, although the person in charge of this service may not have entered it in the books of registry.

ART. 115. The Government, in accord with the Companies, and after the information which it may deem convenient, shall designate the stations where tickets for passengers are to be sold, and merchandise billed to all the points connected with the Railroads, even when these points belong to other Companies, as for the purposes of transportation all are to be considered as one line, and for such cases the Royal Decree of the Treasury Department of January 10, 1863, shall be in force and considered a part of these Regulations.

ART. 116. The passenger carrying in his baggage jewels, precious stones, bank notes, money, stocks of industrial companies, bonds of the national debt, or other valuables, shall state it, exhibiting them before the record is made, declaring the total amount represented by these articles, either as to their selling price or the price at which he estimates them.

The failure to comply with this requisite shall relieve the Company of all liability in case of theft or loss.

ART. 117. When the Company, suspicious of the falsity of the declaration of the contents of a parcel, shall determine to examine it, the Company shall proceed to do so before witnesses, and in the presence of the sender or the consignee. If the latter, invited by the Company, are not present at the time, they shall be cited for that purpose by a Notary Public who shall be requested to do so by an expressed order of the proper authority. If even then they do not appear, the parcel shall be opened in the presence of the Notary and the witnesses.

A proper statement shall be drawn of the examination and its result, signed by all those present and certified to by the Notary, in case this officer is present. The place and date of examination shall be set forth, the notice given to the sender or to the consignee, his presence or refusal to attend, the kind of merchandise, its condition and number, details according to the declaration, and everything which may appear and be shown from the examination at the time the parcel containing it is opened; the names, residence, profession, or business of the witnesses.

ART. 118. After the statement of the examination shall be drawn, according to the provisions of the preceding article, the Company shall send it to the Governor of the Province, so that the proper steps may be taken by the Government without prejudice to the right of sending it also to the competent court in case of a civil or criminal action.

ART. 119. The Company shall not delay the time designated for forwarding the parcels agreed to with the shippers, not even giving as an excuse the examination of the parcels, on account of suspicions of fraud or any other reason, as the examination can always be made at the point of delivery. If the examination shows that the shipper has not made a false declaration, the Company shall pay all the expenses of again closing the parcels and putting them in their original condition.

ART. 120. Whosoever shall make a false declaration when shipping merchandise to the stations, in order to pay a lower rate than that of the schedule, shall pay the Company twice the excess, and indemnify the Company for all damages and losses.

ART. 121. When the Company shall receive articles under a sealed cover, it shall be exempt from all liability when delivering them with the seals intact and in the original form to the shipper or to the consignee.

ART. 122. If cash payment is not made in advance for the transportation charges as per schedule, the Company may refuse to carry empty cases, as well as merchandise which may be damaged, or that requiring additional cover to preserve it; and finally, that which, on account of its small value, will not cover the cost of transportation.

ART. 123. The Companies have a right to refuse parcels badly made up, and all those not sufficiently packed so as to preserve the merchandise they contain. Nevertheless, if the sender should insist that they be admitted, the Company shall be obliged to forward them, exempt from all liability, if the Company records its opposition, according to existing provisions, in the receipt issued.

ART. 124. When the receipt or voucher given to the interested parties by the Company does not state the opposition to receive the

merchandise to which the preceding article refers, the Company shall be liable for the damages proved at the time of delivery at the point of destination; but even in this case it may evade the liability if it proves that the damages can not be ascribed to it.

ART. 125. Animals, merchandise, or any other articles to be transported at great speed, shall leave in the first train which includes cars of all kinds, provided they have been presented for record three hours before the time of departure of the trains. They shall be at the disposal of the persons to whom they are addressed two hours after the arrival of the train. If there be no trains with cars of all kinds which run to the place of destination, they are to be transported in the first one leaving, whether it be an express or mail train.

When the transportation is to be made at slow speed, they shall be forwarded, forty-eight hours at the latest, after the entry of the articles, which shall be at the disposal of the consignees twenty-four hours after the arrival of the train. For the transportation of draft and saddle animals, the number of hours' notice shall be given provided for by the schedules.

ART. 126. The shipping papers delivered by the Company to the conductors of the freight trains shall serve as proof in favor of the owners who may have lost their receipt, whenever they are identified.

ART. 127. The regular schedule rates shall be applicable to all packages or parcels, which, although packed separately, constitute a remittance of more than 50 kilograms, provided it is made by one individual and addressed to a single person.

The parcels and excess of baggage, under similar conditions, shall be considered as a single remittance for the collection of the rates fixed by the special schedule.

The Express Companies and other carriers shall not enjoy these benefits unless the articles forwarded by them are packed in a single parcel.

ART. 128. As for the payment of transportation charges on merchandise, animals, and other articles not included in the schedule, they may be included in the class to which they are most similar, which classifications may be made temporarily by the Company itself, but always submitting them to the Colonial Department, which may change, admit, or refuse them, as it may deem best.

ART. 129. Whenever a parcel contains merchandise of different kinds, the rate of transportation to be charged shall be that for the highest class.

ART. 130. The Companies may establish, within the maximum schedules which they may have been permitted to make, and without damage to the national ports and manufactures, other special

rates, in favor of foreigners, between given points on the line; but the privilege to enjoy these rates shall not extend to transportation between other points.

ART. 131. The Companies may reduce the schedule rates in favor of the shippers who may accept a longer time of delivery than those fixed for slow speed, and of those who shall obligate themselves to forward a minimum number of tons, or those who shall offer any advantage for the transportation; but in no case can the Companies evade the liability imposed on them by these regulations for bad service.

ART. 132. Any special reduction or condition granted in favor of one or more shippers shall be extended to all those demanding it, if they comply with identical conditions.

ART. 133. Whenever a Company grants to one or more shippers a reduction of the schedule rates, the Company shall inform the Government of the conditions under which it has been made.

The Companies shall open a registry in which these conditions shall be recorded, and said registry shall be shown to persons who may request it. The registry shall be numbered by pages and rubricated by the chief of the business inspection.

ART. 134. When there are special schedules for the transportation of certain merchandise, notice shall be given the shippers at the time it is shipped, so that they may select the one most advantageous.

ART. 135. The rates fixed for the transportation of merchandise, under special schedules, can not be increased until after one year has elapsed from their publication.

ART. 136. The rates fixed for the transportation of merchandise, by virtue of special schedules, can not be increased until after the expiration of one year from the time of their publication.

ART. 137. The delay in transportation shall give a right to an indemnity for damages, except in cases of force majeure.

ART. 138. The burden of proof in cases of force majeure is on the Company; and until the Company shall have proved it, its liability shall stand.

ART. 139. Robbery shall not be considered a case of force majeure, except when the Company proves that it did everything in its power to prevent it; nor fire, unless it be proved that it was due to the negligence or to the carelessness of the employees; nor the insufficiency or bad condition of the means of transportation.

ART. 140. The Railroad Companies having terminals at the maritime ports, provided they comply with the formalities and conditions prescribed by the custom-houses, may use instead of a baggage depot for the examination of the baggage, the trains by which it is carried.

ART. 141. The Company which may have carried merchandise, without founding any claims whatever, shall have a right of action for the expense of the transportation and care of the merchandise kept in good condition, against the consignees or the shippers.

In default of payment, proceedings shall be instituted in accordance with the Commercial Code.

ART. 142. The consignee shall pay the expenses of repacking whenever the Company shall prove that it was done to preserve the merchandise which would otherwise have decayed or been lost.

ART. 143. Every action, the object of which is commercial, against the Company and in regard to transportation, shall be brought in the Courts.

ART. 144. The provisions of law which submit to proof the weights and measures of merchants and manufacturers in their warehouses, stores, and shops open to the public, are applicable to Railroad Companies in all matters referring to transportation.

ART. 145. The Companies shall always be liable for the loss and damage of articles intrusted to their care, whether the damage is due to the employees themselves or to strangers who may frequent the offices.

ART. 146. If the Company leases a space in one of the cars of its trains, and does not directly nor indirectly interfere in the handling of the freight, the Company shall not be liable for the loss and damage which may result, being exempt from all responsibility.

ART. 147. In case of loss or damage of the article transported, the Company first charged with its handling can not claim, against the others who were charged with the transportation, unless it prove that the merchandise was delivered to them in good condition. All the Railroad Companies are considered to be connected without a break, as if they were a single line, for the purpose of transportation contracts.

ART. 148. The Companies are not responsible for the natural wear and tear on the merchandise when it is greater than ordinary, nor can it be for fraud or carelessness.

ART. 149. In case the merchandise does not arrive at its destination in good condition at the stated time, the owner or consignee has the right to insist on the liability of the Company which may have failed in carrying out the conditions.

In the same way it may be insisted on when the parcels, clearly and distinctly marked so that no doubt can arise, are delivered to a person different from the one who was to receive them.

ART. 150. Unjustifiable delay of passenger trains shall always be punished by fine, in accordance with Article 12 of the Railroad Police Laws, when the delay shall exceed ten minutes for a run of 100 kilometers for express and mail trains, and twenty minutes for the same distance in case of mixed trains.

The Companies shall also be punished by fine, without prejudice to their civil liability, when in the freight service the loss or damage in handling the merchandise shall be due to negligence or carelessness, and when the delays exceed from one-fourth to double the time provided for in the Regulations or agreed upon for the delivery.

ART. 151. If only part of the merchandise is delivered by the Company within the time provided by these Regulations, the other part shall be the basis for damages; but the damages shall cover both, when the consignee shall prove the impossibility of using one without the other.

Exceptions are made in cases of accident and of force majeure, which must be proved on the same day and place on which they may occur, and not by certificates obtained subsequently, and once the proceedings have been begun, unless a disturbance of public order may have prevented the authorities from freely performing their duties.

ART. 152. If the owner of parcels or packages temporarily mislaid shall have been indemnified for their loss, the Company may, when the parcels are found, cite the owner to be present at the opening; and once the delivery is made, the company shall recover the amount it paid, making amends for the damage due to the delay. If from the investigation of the articles a fraud shall appear to have been committed in the declarations made by the owner, the Company shall in turn have a right to collect damages, giving information of the fraud to the Courts of Justice.

ART. 153. The Companies may establish ordinary transportation service in order to facilitate the communication between towns and the neighboring stations.

The interested parties shall nevertheless be at liberty to carry the goods in their own vehicles or send them by trustworthy persons should they prefer it; but in such case, when the parcels are delivered to the stations, this fact must be stated.

The Companies shall then advise the consignee of the arrival of the trains, so that he may send for the merchandise belonging to him. Forty-eight hours are allowed for such purpose, and if he does not remove the merchandise from the station storage shall be charged.

ART. 154. The Companies may also establish schedules in combination with other land or maritime transportation companies, with the condition that on its lines the same rates shall be charged as when the articles are sent to the points favored by the schedule, even though the shippers, at their own expense, shall transport the merchandise by land or water, employing their own vehicles or vessels.

ART. 155. The consignee of merchandise can not refuse to receive it, even on a holiday, if he be in his house when the merchandise is brought there.

ART. 156. The consignee who may desire to prove the weight of the merchandise delivered to him shall pay the expenses of re-weighing, provided that the result shall be the weight stated in the receipt, as provided for by article 148.

If they do not agree, the expense shall be defrayed by the Company.

ART. 157. The examination of the parcels shall be made judicially when the consignee so demands it.

Experts called for this purpose shall state in their report the outward condition of the parcels, their weight, marks and numbers, the nature and amount of the merchandise therein contained, their quality, whether they have been wet or suffered any damage, the time when, in their judgment, the damage occurred, the probable cause thereof, and, finally, the amount of the damage.

ART. 158. The receipt for the articles transported, signed by the consignee, and the payment of the transportation shall extinguish all right of action against the carrier.

ART. 159. The claims against the Companies for loss or damage of articles transported shall be deducted in the manner and time provided for by the Commercial Code.

CHAPTER IX.

PROCEDURE FOR THE PUNISHMENT OF CRIMES AND OFFENSES AGAINST THE SAFETY AND PRESERVATION OF RAILROADS.

ART. 160. The Governor General shall have power—

1. To see that, fully exercising all his powers and with constant supervision, the Alcaldes, in so far as they relate to them, shall in all respects carry out the provisions of the Railroad Police Law and of these Regulations.

2. To impose fines for the offenses stated in Article 12 of the Law, on complaint of the inspectors.

ART. 161. The ordinary tribunals shall have jurisdiction of the crimes committed on Railroads, according to the procedure and provisions of the Railroad Police Law, and other provisions explanatory of the same.

ART. 162. The supervision of the Railroads shall be mainly exercised by the officers of inspection and the Companies' employees, both having for this purpose the character of sworn guards.

ART. 163. According to Titles 2, 3, and 4 of the Railroad Police Law and the provisions of these Regulations, any violation of these articles shall be complained of to the Municipal Judges of the jurisdiction where they may be committed, whether by the employees of the inspection or those of the Company.

ART. 164. The complaint authorized by the title and signature of the complainant shall be made in duplicate, declaring therein the place where the act complained of occurred. its date, the date of the complaint, the name and description of the offender, his residence and domicile, if they be known. On one of the two copies of the complaint, the Judge shall acknowledge receipt thereof and return it to the complainant, keeping the other as the origin and basis of his future proceedings.

ART. 165. Immediately after hearing the interested party, the Judge shall demand that this Law and these Regulations be complied with, imposing the fines in a proper case, collecting them as soon as possible. The trial being ended and the sentence executed, the Judge shall inform the inspectors of the line of the result of the proceedings.

ART. 166. The offenses committed by the owners of concessions or lessors, in the cases mentioned in Article 12 of this Law, shall be punished by the Governor General, on official complaint of the inspectors, who shall specify them as clearly as possible, and classify them according to their importance and consequences.

ART. 167. The Governor, after hearing the owners of the concessions, or the lessors of the Railroads, and the Administrative Council which hears disputes, shall impose on them the penalty which he may deem proper, according to the Railroad Police Law. If the owners of the concessions or the lessors seek the remittance of the fines, they shall petition the Colonial Department through the Governor, who shall send the same, with his own report, for the proper decision. The decision shall always state the reasons, after hearing the authorities or corporations deemed proper, that of the full Council of State being indispensable. From the decision of the Secretary there shall be no appeal.

ART. 168. The authors of the crimes or offenses mentioned in the Railroad Police Law shall be turned over to the competent tribunal, whether by the employees of the Inspectors, or of the Company, or by any other authority, sending mutual assistance in order to fufill their duty.

CHAPTER X.

MISCELLANEOUS PROVISIONS.

ART. 169. The owners of concessions, or lessors, may freely appoint and discharge their employees; but the Governor General, by the authority of Article 15 of the Police Law and in the cases mentioned therein, may order the Company to discharge any of its employees, communicating the order through the Chief Inspectors, who shall see that the employees are immediately discharged without any appeal.

Discharge from the service may be directed—

1. When the reports of the Chief Engineer of Public Works as to the technical employees show that these are incompetent or that they have placed the safety of the trains in jeopardy.

2. When the reports of the Inspecting Chiefs of Administration as to any employee of the company show that his remaining in the employ is dangerous either to the security of the trains or the maintenance of public order.

Nevertheless, in the latter case the discharge can not be directed nor complaints admitted at the time of elections or thirty days thereafter.

ART. 170. Railroad employees shall wear a uniform, differing according to their class and the road to which they belong.

ART. 171. Road guards and gate keepers can bear the same arms and enjoy the same privileges as Government guards.

ART. 172. No engineer shall be employed in the Railroad service without previously showing, in accordance with the instructions ordered by the Colonial Department, the necessary qualifications for the faithful discharge of his duties.

ART. 173. Notice shall be given immediately by the Station Masters to the Inspectors and to the Governor General, of any accident which may place in jeopardy the safety of the trains or endanger the passengers or employees of the Company or any other persons.

ART. 174. If practice shows that besides the water and fuel deposits existing for the use of the engines, other intermediate deposits at distinct points of the road are necessary, they shall be constructed at the places designated by the Governor after hearing the Companies and the Chief of Public Works.

ART. 175. The special Regulations for the service and operation of each line shall be submitted by the owners of the concession to the approval of the Government.

ART. 176. The written, printed, or lithographed instructions, orders, circulars, and provisions regarding the Railroad service, shall be immediately communicated to the Inspectors.

The manuscript orders shall be copied the day they are issued in a special registry, which shall be presented to the Inspectors whenever demanded.

ART. 177. The Chief Inspectors shall have the right to examine the accounts of the Companies' receipts and expenditures, the Royal Decrees received by the Companies, and any other documents referring to the operation of the road and by which its real condition may be known.

ART. 178. All the notifications to the railroad Companies shall be made at their domicile, and when citations are served on the

Station Masters the citations shall be of legal value only when the Station Masters are duly authorized to represent the Companies.

ART. 179. The Companies shall not resist the attachment of their warehouses and depots when made by judicial order. When attachment is made, in no case shall the articles attached be dispatched and returned to the shipper or consignee, but they shall always be at the disposal of the Court.

ART. 180. It is the duty of the Company to keep in good condition the articles which for any reason may have been deposited in its stations.

When they need more care than the Company can exercise, the procedure shall be in accordance with the provisions of the Commercial Codes for similar cases.

ART. 181. The articles forgotten by passengers and left in trains or waiting rooms, those falling on the way when the train passes, and all those the owners, shippers, or consignees of which are unknown, shall be kept in a depository; a special record shall be made of them, stating the date and place of finding the same, and their description.

ART. 182. If after the third publication of the advertisement in the Gaceta Oficial de Puerto Rico, and after a year has elapsed, nobody shall claim the articles forgotten or lost, referred to in the previous article, they shall be sold at auction and the proceeds applied to charity organizations, after deducting the expenses for care and storage.

ART. 183. The telegraph lines in charge of the Companies shall only send news, notices, and dispatches regarding the Railroad service.

ART. 184. The care as well as the attendance and maintenance of the telegraph material, including the wire devoted to the Government service, shall be at the expense of the Companies.

The offenses committed against the telegraph service, and those causing destruction or damage of its material, shall be considered offenses committed against the road, and as such punished according to the provisions of Title 5 of the Railroad Police Law.

ART. 185. In the most public places of the stations, and especially in the waiting rooms, there shall always be posted, for public information, copies of these Regulations.

Its provisions and those of the document of conditions referring to merchandise shall also be posted in the places where the latter is received.

ART. 186. The chief conductor of every train shall always carry on the trip a copy of these Regulations.

The engineers, firemen, brakemen, road guards, and other employees in the service of Railroads, shall be given an extract of the provisions of the Regulations which they may have to observe.

ART. 187. The Secretary of the Colonies or the Governor General, as the case may be, has the power to fix the times when the Companies must submit for approval their Regulations, schedules, and other provisions, which they are compelled to do.

If the time fixed elapses without the Companies doing so, the Government shall decide as it may deem best.

ART. 188. The offenses against these Regulations, the decisions of the Government, and those adopted by the Governor General with the approval of the Government or by virtue of his authority, referring to Railroads and their best service and police, shall be punished according to Title 5 of the Railroad Police Law.

ART. 189. In matters not provided for in these Regulations, as to service and police of the Railroads, the Regulations in force in Spain shall be temporarily followed, if they do not conflict with the Puerto Rican Regulations, without prejudice to the right to consult the Colonial Department for the final decision for the future.

Approved by Royal Decree of this date.

BALAGUER.

MADRID, *January 16, 1888.*

DEPARTMENT OF PUBLIC WORKS, CIVIL CONSTRUCTION, FORESTS, AND MINES.

RAILROADS.

His Excellency, the Secretary of the Colonies. communicates to the Governor General, under date of the 6th ultimo and under No. 101, the following Royal Decree:

COLONIAL DEPARTMENT.

ROYAL DECREE.

MOST EXCELLENT SIR: In view of the consultation by Your Excellency in communication No. 2111, of the 15th of last September, considering the work of extending the lines of the Matanzas Railroad, as to whether in cases such as this there shall be applied the provisions of the Law and Regulations of Railroads, for the construction and service of those roads declared of general utility, or the provision of the same Law and Regulations of Railroads for private use:

Whereas, in Article 2 of the Law of Railroads, Railroads are divided into those of general and private service, and Chapter X refers to the latter under the heading "Railroads devoted to private use," to which, according to Article 63, there shall not be granted the right of eminent domain, nor the occupation of lands belonging to the State, but only those of public property; and whereas, Article 64 declares that there may be Railroads for private use which at the same time may render public service, and for such cases it says that there may be granted the occupation of lands belonging to the State, by virtue of a law, and the right of eminent domain, and that therefore Articles 63 and 64 well define the legal existence of Railroads devoted exclusively to private use, and of the Railroads which, besides having that use, may perform public service, which can not be any other than the transportation of passengers and merchandise; and whereas, the said articles also state what the administration may grant, and how and in what cases, making no distinction for this between one class of Railroads and the other, and referring to the legislative power, the occupation of State lands

and condemnation, when either is asked, because, when it is not asked, said power is not exercised, as the administration has authority to finally resolve as to the occupation of public property; that if there could be any doubt whatever, and it should be contended that the Railroads should comply with different rules and Regulations, the doubt would be dispelled by reading Article 65, which tacitly grants the same rights to both classes of Railroads, and that giving the law a different interpretation from the above would be equivalent to declaring that, when a Railroad is exclusively devoted to private use it has more facilities, advantages, and rights than when the same Railroad does public service, even if in both cases the Companies only ask the occupation of public property.

Considering that the same findings may be deduced not only from the examination of the Railroad Law, but also from the examination of the Regulations for its application, Articles 72, 73, and 74 are developments of Article 63 of the Law, and Articles 75, 76, and 77 of Article 64; but only when condemnation or occupation of State lands is asked, or both at the same time, which is the case provided for in Article 64; that the text of Article 75 leaves no doubt as to this point, because the words, *in this case*, with which the second paragraph commences, only refer to petitions asking the occupation of land of the State, and forcible condemnation, as the Council of Administration of that Island judiciously says in its report, and that if there be a desire to give the words any other interpretation it could not be done after reading paragraph third of the same Article 75, and Articles 76 and 77, which provide for its fulfillment; and, considering that in all these Articles it may be seen that they only refer to condemnation and occupation of State property, and also that there is only one object stated in the second paragraph of Article 77, which is to give the Government all the necessary facts to present to the Cortes the proper form of law.

In conformity with the opinion of the full Consulting Board of Roads, Canals, and Ports, the King (may God preserve him), and in his name the Queen Regent of the Kingdom, has deemed proper to order, as a decision in the said consultation, that the formalities which must be complied with for the construction and operation of the roads of that Island, devoted to public use, which may not have been declared of general utility, and for which neither the right of eminent domain nor the occupation of State lands is asked, although possibly those which are public property shall be the formalities stated in Articles 62, 63, and 65 of the Railroad Law, and in Articles 73 and 74 of the Regulations, and that said decision shall be extended to the Railroads of the same class in Puerto Rico.

By Royal Order I inform Your Excellency, accompanying this with a copy of the Gaceta de Madrid, in which the said Royal Decree is published, which must also be published in the Official Gazette of that Island.

May God preserve Your Excellency many years.

MADRID, *February 7, 1888.*

BALAGUER.

And His Excellency, the Governor General, having decreed its execution under date of the 5th instant, has ordered that it shall be published in this official paper for general information.

PUERTO RICO, *March 10, 1888.*

MIGUEL VASCONI,
Secretary pro tempore of the General Government.

TRANSLATION.

COMPILATION OF THE ORGANIC PROVISIONS OF THE ADMINISTRATION OF JUSTICE IN FORCE IN THE SPANISH COLONIAL PROVINCES,

AND

APPENDICES RELATING THERETO.

(1891.)

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
July, 1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

INTRODUCTION.

The legislation relating to the personnel of the administration of justice in the colonies and to the organization of its courts is so extensive, so varying, and so contradictory, that a full review of the subject, no matter how succinctly made, would require much more space than the limits of the present volume permit. We have, therefore, been obliged to confine ourselves to some of the more essential laws, which may serve as a preparation to the study of the modern compilation.

The first source of the law appears in the compilation of laws of the Indies, which established numerous provisions referring to the various officials administering or assisting in the administration of justice; but as practical needs went on demonstrating the deficiency of this compilation, new partial provisions were published from time to time, some by the department of grace and justice, until 1851, when the colonial department (Ministerio de Ultramar) was created; the latter issued some more provisions; and not a few were decreed by the governors-general of our possessions, as well as by the regents of the audiencias. In this way a confusion of legal texts bearing on the matter was created, so that it is difficult to classify them systematically, as they are too numerous to be mentioned in full. For these reasons, we mention only the most important provisions, in their chronological order.

The royal instruction of June 20, 1776, given to the regents of the audiencias of the Indies, contained various rules on the administration and attributes of audiencias and the manner of filling vacancies; the *Real cédula* (royal letters patent) of February 27, 1796, approved the statutes of the association of court clerks (*colegio de escribanos*) of Habana, and another, of April 16, 1815, provided for the formation of the list of the *escribanos* (court clerks) to reside in Cuba; and the circular one of November 10, 1818, established the annual distribution of commissions among the *oidores* (judges who hear pleadings and decide suits in audiencias).

On June 19, 1831, a *Real cédula* established the audiencia of Puerto Rico and six mayoralties (*alcaldías mayores*), and approved the division of that island into judicial subdistricts; another *cédula* being published on January 29, 1833, ordering the fulfillment of the royal decree of the 18th of the same month re-establishing law 2, title 6, of partida 3,[1] which fixes the age of seventeen years as the minimum for practicing law.

[1] Partida 3. Part of a code of Spanish laws compiled by the direction of Alfonso X, called "Las Siete (seven) Partidas."

From among the measures promulgated in 1835 we shall only mention the "*carta acordada*"[1] of the supreme court, dated January 9, communicating the provisions of the royal decree of December 23, 1834, on administering the oath to regents, secretaries, and *fiscales* (public prosecutors); the Royal decree of January 27, communicating to the government of the Indies, for fulfillment, the *Real cédula* of November 27, 1832, which provided that admission to the bar (*colegios de abogados*) of the Kingdom should be open to all lawyers making application; the regulation of November 26 for offices of notaries public (*escribanias públicas*) of Habana; and finally, the orders published on December 20, 1835, for the audiencias in Spain were extended to the colonies, to be observed in so far as they did not conflict with colonial legislation.

On May 5, 1858, a royal decree approved the by-laws for the government of the bar in Cuba; the royal order of August 22, of the same year, extended to Cuba the royal decree of the 16th of the preceding June, creating an audiencia in the capital of the island, this audiencia being afterwards given the name of "pretorial" and considered superior in rank to the other territorial audiencias of our Antilles and possessions in the Philippines, and on September 26, 1839, the said audiencia was declared competent to appoint judges of inquiry (*jueces pesquisidores*).

In order to regulate representation in court, the regency of the Kingdom, by a decree of February 26, 1842, created two offices of solicitor (*procurador*) in every seat of a judicial subdistrict in Puerto Rico, issuing rules for filling the same and ordering the preparation of the corresponding regulations and schedules of fees; and in the next year the *auto accordado*[2] of October 5 approved the by-laws for the *Colegio de Escribanos* of Santiago de Cuba, in conformity with what was done in 1835 for those of Habana.

The state of disorganization of the mayoralties in the Philippines caused the publication of the *real cédula* of October 3, 1844, relating to the reform and reorganization of the judiciary in the said islands; while in the next year, among other less important measures, there were published the royal decree of February 25, approving the by-laws for the Association of Public Solicitors of Habana, and the royal decree of July 24, creating several mayoralties in the island of Cuba, and fixing the salaries for each of the three categories, viz, entrance, promotion, and final, into which the same were divided for this purpose.

Subsequently there were published the royal order of February 2, 1846, explaining the rules governing the seniority in service of the *oidores;* the *auto acordado* of the audiencia of Habana, dated April 19, 1847, establishing rules for discharging the office of solicitor; the *real*

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cédula of June 27, of the same year, ordering the observance of the royal decree of the 24th of the same month, which organized the *alcaldías mayores* in Puerto Rico; the royal order of October 1, of the same year, ordering the formation of graded lists, fixing the seniority in service of judicial officials, which royal order was declared by another royal order of December 6, 1849, as not retroactive; the royal order of April 3, 1848, which provided that applications of associate justices and judges to contract marriage should be submitted with a report of the Governor-General and of the regent of the audiencia and presented with the consultative vote of the *Real acuerdo*, and the royal order of February 6, 1849, providing that audiencias should make report of the officials who did not return to their duties at the expiration of their leaves of absence.

In 1851 many provisions of great importance were published, such as the *Real cédula* of January 20, ordering the enforcement of the royal decree of January 10, which established the precise conditions required to serve as advisors (*asesores*) to judges, and the forms and conditions necessary in filling vacancies in *alcaldías mayores*, according as to whether the places belonged to the entrance, promotion, or final category, and the royal decree of March 7, establishing rules governing applications for places in all the categories of the magistracy, the judiciary and the department of public prosecution in common law, and for suspensions, transfers, and retirement of the said officials, which decree established in its article 5 the various categories of the judiciary and of the department of public prosecution, and in article 9 the incompatibility of the same and ordered in article 12 the publication in the *Gaceta* of the decisions referring to the personnel, and in article 13 the formation of graded lists for all the categories.

Various provisions of interest were also published in 1854, of which the following are worthy of mention: The royal decree of January 27, reorganizing the *alcaldías mayores* in the Philippines; the royal decree of February 1, 1854, declaring the seniority in service, and precedence of the associate justices of the audiencia of Madrid and of the presidents of chambers of the other audiencias, who had been transferred as *oidores* to the pretorial one of Habana; the royal order of the 17th of the same month, ordering the application to Cuba of the regulations of October 14, 1852, as to the record of reports and on the manner of imposing correctional penalties on audiencias and inferior courts; the royal decree of March 15, creating in Cuba the offices of *abogados fiscales*[1] and abolishing the offices of agents of the department of public prosecution, and, finally, the royal order of July 31, on the substitution of *abogados fiscales* in cases of leaves of absence, vacancies, or sickness.

Notwithstanding this large number of provisions, great needs were noticeable in this important branch of legislation, and in order to fill

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Notwithstanding this large number of provisions, great needs were noticeable in this important branch of legislation, and in order to fill

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these needs and at the same time to uniform the precepts which had to be observed, a very important *Real cédula* was published on January 30, 1855, issued for the purpose of doing away with inveterate abuses and correcting illegal practices. It contained 12 chapters treating, respectively, of local judges, of ordinary subdistrict judges, of royal audiencias, of the supreme court of justice, of jurisdictions, and of special superior and inferior courts, of the powers of tribunals in matters of administration, of auxiliary offices and officials of the tribunals and judges, of the department of public prosecution, of challenges, of sentences, of appeals in nullity and cassation, and of liability and correctional penalties.

This *Real cédula*, which ceased to be in force first in Cuba and Puerto Rico and afterwards in the Philippines, was modified or supplemented by numerous provisions on the administration of justice in the colonies, of which the following may be mentioned: The royal order of the 1st of the following August, which extended to the colonial possessions the orders of August 29, 1843, November 14, 1853, and January 9, 1854, on the apparel and insignia of associate justices, judges, and officials of the department of public prosecution, and the royal order of August 19, 1855, establishing the judicial division of the island of Cuba.

In the period intervening between the last year above cited and the year 1875, when by the royal decree of April 12 a complete reorganization of colonial courts and tribunals was effected, the following measures, as of greater interest, deserve to be recorded: The royal order of January 17, 1857, increasing the salary of *promotores fiscales;* [1] that of March 30, 1858, creating the office of *secretario de acuerdos* [2] in the audiencias of Habana, Puerto Rico, and Manila, the duties of which had formerly been performed by the court notaries (*escribanos de cámara*); the orders issued in the same year by the regent of the first of the above-mentioned audiencias on the registry of rulings (*providencias*) and books of assignments and secret votes; the royal decree of October 1, increasing the personnel of the audiencia referred to above; the royal order of the 3d of the same month, ordering that associate justices discharge the duties of assistant auditor and, provisionally, the duties of auditor in case of vacancies; the royal order of the 3d of the following December, fixing the allowances of judicial reporters (*relatores*) in the Philippines; that of June 2, 1860, prescribing the number of public clerks' offices (*escribanias*) in Puerto Rico, and establishing rules for filling the same; the royal decree of the 9th of the following July, reorganizing the chambers of the audiencia of Puerto Rico and of the audiencia of chancery of Manila; that of the 30th of the same month, on the organization of mayoralties in the Philippines; that of July 4, 1861, on the powers of colonial audiencias; the royal order of the fol-

[1] *Promotor fiscal.* Official of the department of public prosecution, next below in rank to the *abogado fiscal.*

[2] *Secretario de acuerdos.* Secretaries of sessions *in banc* for the adoption of resolutions of general application.

lowing day, determining the personnel of the office of the *Secretario del Real Acuerdo* in the audiencia of Puerto Rico; that of October 1, fixing the salary of the employees in the office of the secretary of the audiencia of Habana; that of December 4, fixing the annual salary of regents of the colonial audiencias; and that of the 5th of the same month relating to the salaries to be paid to substitute *promotores fiscales.*

The royal order of March 20, 1862, regulated the granting in advance of leaves of absence to judicial officials and to those of the department of public prosecution in the colonies; another of the 4th of the following June, provided that court clerks should prove their efficiency before obtaining the office. On July 20 it was declared that the public department should communicate with the colonial department directly; on November 26, 1863, an allowance of daily salary was fixed for judges and other officials, when discharging their duties; the regulations of the peninsular audiencias, dated December 25, 1865, were extended to the colonial possessions; and many other measures were issued which are omitted here, in order not to prolong this review too far.

Subsequently to the important reform accomplished by the royal decree of April 12, 1875, there were published: the royal order of February 22, 1878, which abolished the chambers of war and navy of colonial audiencias; the royal decree of May 23, 1879, fixing the number and the categories of audiencias, as well as provisions for filling offices in the judiciary and in the department of public prosecution; that of November 24 of the same year, giving to the civil chambers of audiencias the cognizance of matters arising from the suppression of the courts of war and navy, and of questions of competency arising between ordinary and military courts; that of July 20, 1882, ordering the observance in Cuba and Puerto Rico of the law of civil cassation, which remained in force until the publication of the law on procedure of September 25, 1885; the royal decree of June 22, 1883, abolishing the general probate court (*juzgado general de bienes de difuntos*), which existed in the Philippines, and returning to the ordinary jurisdiction the cognizance of matters which had been heard by the suppressed court; an important royal decree of January 15, 1884, reorganizing the municipal courts in Cuba and Puerto Rico, and prescribing regulations for their operation; that of May 29, 1885, on appointment of judicial and of public prosecution officials, which fixed the conditions for entering upon either of these careers, and for filling vacancies; and another of the same date, organizing the personnel of the auxiliary officials of superior and inferior courts for a more perfect enforcement of the law of civil procedure in the Philippines.

The law of August 19, 1885, the principal object of which was to uniform the judicial and public prosecution careers in the Peninsula and in the colonies, before that time distinct and independent, determined the various categories, making them correspond with each other,

in order that the officials of the colonial possessions might be transferred and promoted to the Peninsula, and those of the Peninsula might likewise be transferred and promoted to our Antilles and the Philippines. It provided that the conditions for entering on these careers in the colonies should conform with the provisions of the royal decree of September 20, 1875, although it extended to the said careers the articles of the Additional Law of October 14, 1882, which establishes the order of succession in case of vacancies. It further provided that the secretaries of grace and justice, and for the colonies, in accordance with the orders of succession above referred to, and taking into consideration the organization of the tribunals in their respective departments, should fill vacancies which might occur with officials belonging to them, being permitted, provided they fill the conditions established in the said law, to appoint in the third or fourth rank those requesting a transfer or promotion.

For promotion to the rank of associate justice of the supreme court (*magistrado del tribunal supremo*), treated of in Article 50 of the additional law, it made the associate justices of the audiencia of Habana equal to those of the audiencia of Madrid; it stipulated that in the future there would not be conceded any uniformity of career to officials of the department of grace and justice, and those of the direction of the same name in the department of the colonies, although respecting privileges previously acquired by those who had already been declared in the judicial or the public prosecution categories; and finally it extended to the colonies the provisions regarding incompatibilities prescribed in the organic law, excepting the judges in the Philippines, who, because of their office, in accordance with the laws there in force, would perform, besides the judicial functions, other proper duties, as long as the present organization in these islands should remain in force.

As a complement to the provisions of this law, the royal decree of September 9 of the same year was issued prescribing that the orders of succession established in the royal decree of the 29th of the preceding May for the appointment of judges of the promotion and other categories superior to the latter, be subrogated to those established by the additional law of 1882, and that the department of grace and justice should formulate every year a single graded list of the judiciary and of the public prosecution career, including the officials of the Peninsula and of the colonies, in the order of seniority in their respective categories; for which purpose there should be forwarded to the same by the department of the colonies, in the month of January of each year, a list of officials of these colonial provinces, corrected to December 31 of the preceding year. Subsequently the royal decree of February 26, 1886, was issued creating the audiencia of Cebú, establishing the regulations for its organization, and fixing the limits of its territory, and that of the audiencia of Manila; the royal decree of December 26, of the same year, establishing rules for the preparation of the graded lists; that of February 25, 1887, reorganizing the board

of codification for the colonial provinces; that of the 12th of the following August, extending to those provinces the law of June 18, 1870, for the exercise of the right of pardon; and that of July 6, 1888, establishing a board of revision for the proceedings of active officials of the administration of justice and for the collection of information concerning the ability of those who thenceforth should solicit reinstatement in the judicial career, and in that of public prosecution, which board was abolished by the royal decree of October 12, 1890; and the royal decree of July 10, 1888, ordering the publication in the *Gacetas* of Madrid, Habana, Puerto Rico, and Manila, of decisions concerning appointments, transfers, retirements with pensions, suspensions with salary (*cesantías*) of judicial officials, and those of the public presecution directly under the department of the colonies.

The important royal decree of October 26, 1888, the main object of which was the organization of the courts of Cuba and Puerto Rico, for the cognizance of criminal causes in oral and public trial and in single instance, introduced conspicuous changes in the organization of the courts of our Antilles, prescribing for this purpose provisions concerning the establishment of new criminal audiencias and the territory under their jurisdiction; the power and organization of criminal, superior, and inferior courts; the conditions for admission and promotion in the judicial career and that of public prosecution; order of seniority; titles and salaries of the officials; and the separation of the civil from the criminal jurisdiction in the courts of the capitals of Cuba and Puerto Rico, in conformity with the provisions established in the Peninsula by the royal decree of July 11, 1887, for those of Madrid and Barcelona.

This most important reform, inspired by a commendable intention to extend to the colonial provinces the oral and public trial with single instance before a collegiate court (*tribunal colegiado*), different from the secret examination system (*elemento instructor*), to thus facilitate a prompt participation of the accused in the preparatory steps of the real oral trial as a guaranty of its prompt conclusion, to place in the hands of the citizen legal means of a legitimate defense of what is closest and dearest to him and which should be most respected, to give to all an opportunity to assist to preserve public order, to respect innocence, and to punish crime, and, finally, to modify the penal procedure according to the principles admitted by science as indisputable—this reform, we repeat, could not have been extended to the Philippines because the backwardness of culture in these islands, the difference in language of their inhabitants, their lack of clear notions concerning public duties and those of citizenship, rendered impossible for the present the application of a system based on publicity of evidence and liability manfully accepted and understood beforehand, coupled with the duty to assist the administration of justice at any cost and without restrictions.

Another decree of the same date as the preceding one established the service of statistics of the administration of civil and criminal justice for the colonial provinces and possessions, on the same basis on which

a similar legislation for the Peninsula had been promulgated in the decrees of March 18, 1884, and January 1, 1887. The royal decree of November 16, 1889, prescribed rules for filling the offices of court clerks in Cuba and Puerto Rico; the royal decree of the 28th of the following December established the rules to be observed for the appointment of substitute associate justices (*magistrados suplentes*); that of December 30 fixed the conditions regulating the filling of vacancies in the judicial and in the public prosecution careers, reestablishing for this purpose article 11 of the royal decree of May 29, 1885; and, finally, the royal decree of April 10, 1890, which follows this preface, charged the board on codification for the colonies with the drafting of a plan of judicial organization. The royal decree of the 13th of the following October reestablished the uniformity of the legal officials in the direction of grace and justice in the department of the colonies who were deprived of this right since the publication of the law of August 19, 1885; on October 13, 1890, a decree-law was published regarding the admission, transfer, and promotion of officials of the general administration of state in those provinces, many of which provisions, such as those relating to the time set for embarkation, allowance for transportation, and to other ones, are applicable to the officials of the administration of justice; and on the 31st of the same month the regulations for competitive examinations for appointments as candidates (*aspirantes*) to the judiciary were published.

The practical application of this accumulation of provisions, the mere enumeration of which is tiresome, was very difficult, and demonstrated the imperative and urgent necessity of compiling into a single set of laws all the precepts on the organization and government of courts. With this end in view, the Government first charged the committee on codes to draw up the proper project, and it subsequently inserted in article 25 of the colonial budget law for 1890–91 the necessary authorization to publish a compilation of regulations for the organization of courts, by virtue of which the one bearing the date of January 5, 1891, was published.

Neither the nature of this book nor its dimensions permit our making a sufficiently thorough study of the new compilation, for which reasons we confine ourselves to making some observations on the new legal text as briefly as possible.

It is immediately apparent that the greater part of its provisions are a literal copy of those in force in the Peninsula, and that where they have been departed from the principal deficiencies or imperfections are noticeable, as occurs, for instance, in the part referring to judicial irremovability, to which we shall refer later on.

It is also surprising that the authors of the compilation, instead of including in its precepts the provisions of the law of August 19, 1885, regarding the transfer of the officials of the colonial possessions to the Peninsula, a measure of so great importance, should have omitted the same in the compilation altogether; and that they likewise refrained from

including the contents of the royal decrees of September 9, 1885, and December 26, 1886, referring to the formation of graded lists, and the royal decree of October 13, 1890, reestablishing the uniformity of the officials of the direction of grace and justice of the department of the colonies.

Leaving out the subjects comprised in the organic law, which modern principles of legislation consider a proper component of the laws relating to judicial prosecutions, the authors of the compilation have accepted the structure of the former and followed the method of the same with only the indispensable modifications in those subjects in which it differs from the standard according to which that of 1870 had been drafted.

The *promotores fiscales* and the present organization of the courts of first instance and of the justices of the peace in the Philippines are retained, as oral trial and the single instance for criminal matters, now in force in Spain, Cuba, and Puerto Rico, could not as yet be extended to those islands, for reasons apparent to all; and modifying in this particular the law of August 19, 1885, it gives the category of judges of entrance or of *promotores fiscales* of the promotion category to the vice-secretaries of criminal audiencias, who formerly were of a grade equal to that of *promotores fiscales* of the entrance category.

With regard to the substitute associate justices (*magistrados suplentes*), although it fixes the same requirements for obtaining appointments as are established in the additional law, this latter is departed from in the part in which the compilation provides, as did the organic law, that appointments shall be made for the judicial year instead of being of a permanent character, as they are in the first law cited, and in which it acknowledges the fitness for such places of the associate justices of local courts of administrative litigation.

In so far as one of the most important matters of organization is concerned, namely, that relating to admission and promotion in the career, the standard observed by the authors of the compilation is undoubtedly very strange; for, if their desire was that the officials of the colonies should be governed by the same provisions as those of the Peninsula, they should arrange them conveniently and insert them among the articles of the new set of laws, while the modifications which could be effected in the Peninsula in the future could easily be extended by Royal decree to the colonial possessions; and as this system was not adopted, the authors having limited themselves in this important question to so vague a declaration, it happens that, after the publication of the decree-law, there exists the greatest confusion concerning this point, and that the clear and explicit precepts of the Royal decree of October 26, 1888, have been substituted by many other provisions, in part contradictory and in part inapplicable to the officials of the colonies, as, for instance, the Royal decree of October 3, 1889, which gives to those serving in the Canary and the Balearic islands preference to

being transferred to Spain, and article 23 of the budget law for the Peninsula, which concedes the right of entering as judges of the entrance category to secretaries and vice-secretaries suspended with pay, who may have filled these offices temporarily or permanently.

Some other provisions in force in the Peninsula, as those relating to promotions on account of absolute seniority in the career, and in their rank according to specified merits of those enumerated in article 170 of the organic law, it is impossible to presume whether they shall or shall not be applied in the colonies, as not even there have graded lists covering the whole service in the career been published, nor does the compilation prescribe anything relating to special merits for promotions. In any case, we believe that for their application to the colonies it will be necessary to publish some supplementary provision.

Regulations concerning announcements of competitive examinations for judicial positions, established by previous legislation, namely, by article 42 of the royal decree of October 26, 1888, were also modified in such a way that instead of being held annually, the examinations were held only when required by the needs of the service, the number of vacancies being taken into account.

Instead of following in the part relative to incompatibilities the accepted standard in what refers to admission, transfer, and promotion—that is, instead of declaring the laws in force in the Peninsula to be applicable to the colonies, the authors of the compilation have preferred to establish in a limited manner, and with great accuracy, provisions on such an important matter which, in the Peninsula, are the object of articles 117 and 120 of the organic law and article 29 of the additional law, of the royal decree of August 28, 1885, and of the royal orders of December 5, 1888, and February 14, 1889; the principal reform which the compilation contains in this point, and which has for some time been demanded for the Peninsula, being that of establishing that there is no incompatibility for an official in his native town, provided that his birth occurred during temporary residence of his mother and had so been declared, in order to avoid the really unjustified case of an official not being able to render services in the town of his birth, in view of his having resided there subsequently but a very short time.

The serious defects in the organization of municipal justice established in the law of 1870 having been made evident by long experience, it was to be hoped that the compilation would modify this law in the manner considered most adequate to its ends. Notwithstanding this and the reform which seems about to be realized in the Peninsula, the authors of the new set of laws, being inspired by the standard of strict uniformity, have limited themselves to copying the provisions of that law.

One of the fundamental principles of a good judicial organization, which was established in Spain for the first time by the royal order of October 16, 1840, and which was sanctioned in a categorical manner by the law of 1870, is that of the irremovability of judges and associate justices; and this principle, which has suffered many vicissitudes, up to

the point of being annulled in practice, and which in obedience to the imperative demands of public opinion and convenience has been reestablished in all its force by the important Royal decree of September 24, 1889, is accepted by all as necessary for the independence of courts, because it constitutes the firmest guaranty of its impartiality and rectitude.

Notwithstanding this, the authors of the compilation, who have copied from the law of 1870 not only its structure but even the literal text of the greater part of its precepts, have ignored this guaranty; and without establishing this most important privilege of judges and associate justices, as was done in that law, they immediately take up in the corresponding title the subject of transfer, suspension, discharge, and retirement of said officials, introducing at the same time a reform objectionable in all respects, but which was a necessary consequence of the system adopted, namely, that of substituting the provisions of the organic law devoted to the determination of the just causes for the dismissal of judges and associate justices by others which treat of the discharge of the same, and which, owing to their vague and undetermined character, may give rise to the abuses of the discretionary power of ministers of justice.

We do not forget, in expressing ourselves in this way, the distinct political-administrative organization of our colonial provinces and possessions; rather, on the contrary, on account of these same circumstances; on account of the necessity to place the administration of justice on solid bases, which is the firmest guaranty of the respect of law and rights sanctioned thereby; on account of the advantage for public and private interests, in cases where the judicial officials are shielded from arbitrary decisions and abuses of the central or local power; on account of the fact that the same requirements for admission should be required as are in force in the Peninsula; on account of the grave injuries which are invariably occasioned by a transfer without cause, especially when such distant countries and such costly and troublesome voyages are in question, we are of the opinion that the establishment of judicial irremovability in the colonies was absolutely necessary.

Why has it not thus been done? This is a question we are unable to answer, as the authors of the compilation have not deemed it proper to state the reasons on which they have based their work.

Another reform, established since the royal decree of October 26, 1888, is the separation of the civil from the criminal jurisdiction in the inferior courts of Habana and San Juan de Puerto Rico, as was done in those of Madrid and Barcelona by the royal decree of July 11, 1887, and the consequent creation of the offices of secretaries of examining courts (*secretarios de instruccion*) for the courts of this name, all the court clerks (*escribanos*), as a consequence of this new organization, being assigned to the courts of first instance.

With regard to recording clerks (*escribanos de actuaciones*), although the purpose of the compilation is to extend to the Philippines the provisions established for those of Cuba and Puerto Rico, taking into account that they will be inapplicable in some cases, it prescribes the necessary rules in order that in such cases the clerkships be filled by persons of acknowledged fitness for the discharge of the duties thereof; and with regard to attending witnesses (*testigos de asistencia*), an institution peculiar to our possessions in the Philippines, in spite of being contrary to the principles of organization which the decree-law inspires, it has been necessary to retain them in the compilation because of the imperative necessity of not leaving without assistance all those courts in which there are no recording clerks as yet.

In treating of incompatibilities for practicing law, the compilation contains a precept which did not exist in the organic law, but which, however, is included in the decree-law, with relation to the employees of the colonies, namely, the one establishing that those who hold offices in the career of the general administration of State shall not be permitted to practice law.

This incompatibility, which neither exists in the Peninsula nor can be justified by any reason, far from appearing proper to us, appears objectionable in every respect, as instead of placing obstacles in the way of those who go to accept positions in the colonies they should be given every opportunity to increase their emoluments in a worthy and honorable way, as would be the practice of a profession which is not closely or even remotely related with the service of the general administration of the State.

We could make some other remarks, but we believe that those that have been stated are sufficient to give an idea about the new set of laws for the colonies, and the principal reforms which they effect.

It remains for us, before concluding, to repeat an opinion which is upheld by many, and which gains strength daily. If in the colonial territories there govern, with few exceptions, the same provisions as in the Peninsula as to the organization of courts, and the same substantive laws and laws of procedure; if the judicial and public prosecution careers of the colonies and the Peninsula are united, why does this branch of the administration not pass to the department of grace and justice, whence it originated, and from which it should never have been separated?

RAMON SÁNCHEZ DE OCAÑA.

JANUARY, 1891.

COLONIAL DEPARTMENT.

ROYAL ORDER.

As the precepts regulating the organization of tribunals of justice in the colonial provinces are dispersed among different legal provisions, are deficient in some points not embraced within the limits and scope of those partial provisions, and furthermore are frequently heterogeneous and often contradictory among themselves, owing their origin to distinct standards or responding to various exigencies of the moment, it is evidently advantageous, if not imperatively necessary, to gather and unify in one classified body all those which can be collected, harmonizing in the same all discrepancies which they contain, introducing such modifications as are suggested by the progress of science, the social evolution of those territories, the period of time which has elapsed, or which the lessons of experience may suggest, supplying the omissions that are noticeable in the scattered legislation in force, and forming, finally, a set of laws that would contain everything which refers to the organization and powers of those courts, while in the peninsula the law on judicial power, which is being prepared, is published and can be extended to the colonies with the indispensable modifications required by the special conditions of those countries.

Among the most important points which a set of laws of such a character should contain, the one which refers to the exact determination of the independence of the judicial power, within the limits of its sphere of action, should particularly be borne in mind.

In order to maintain this independence the absolute irremovability of officials of the administration of justice is not necessary, a principle which, although formerly a dogma of certain schools, is at present an object of discussion and controversy among themselves, and the convenience of its application very doubtful, provided it is replaced by such conditions of stability that said officials find themselves protected and guaranteed against possible arbitrary decisions of the ministers, without annulling the means of government which should be preserved by the central power.

Collaterally with the principle of the independence of the judicial power should be placed the bases and the rules which render efficacious the liability of the officials whom society entrusts with the sacred mission of administering justice. This point is one of those in which the legislative power should give in a short time enforced satisfaction, to the requirements of science and to the demands of public opinion, by

defining and regulating this liability, either in the law of the organization of the judicial power or by adopting wholly or partially the proposition which was submitted to the Senate by one of the most illustrious members of the Committee on Codes, over which Your Excellency so worthily presides. A problem of such importance should not in the meantime be left unnoticed, and if perfection can not be attained under present conditions, at least provisional solutions should be sought which approximate the same as much as possible.

The unification of the careers of the peninsula and the colonies being sanctioned by measures of a legislative character, the removal of all obstacles opposing this measure is of indisputable advisability for the practical realization of that useful provision, by facilitating to the colonial officials access to positions in the career in the Peninsula, if the former possess the qualifications required by law for filling these positions, and by creating at the same time incentives for those of the Peninsula to accept employment in the colonies, avoiding, however, the danger of converting these incentives into abusive means of securing rapid and unjustified promotions by leaving the present measure in force, prohibiting the admission of lawyers to the category of judges, based on the fact that the qualifications required by them do not offer sufficient guaranty of fitness for the discharge of the duties of such offices, and by determining the qualifications required of those who aspire to the fourth grades or ranks in the magistracy (*magistratura*), in order that the latter should not become an irregular means of obtaining employment in the Peninsula with fewer qualifications than are required by the laws in force.

As there is a university in Manila, which, notwithstanding the exceptional characteristics of its organizations, has a recognized official character, and confers academic degrees of the faculty of law equivalent in importance to those of the Peninsula and Habana, and the time being at hand when this university must lose its exceptional characteristics, and become equal in every respect to other universities of the State, justice, impartiality, and even political necessities advise the granting to natives of the archipelago admission to the judicial career, which is now to a certain extent closed to them, establishing the reasonable proportion of competitive examinations to be held in Manila.

The necessity of transfer from the Philippines to the Antilles, and *vice versa*, to which the officials of the colonial judicial career are compelled, in order not to renounce the legitimate promotions to which they are entitled in either of these groups of islands, constitutes for the same an irreparable damage, not so much on account of the trouble which such transfers cause, as on account of the many expenses disproportionate with the modest remuneration assigned to their offices. In order to remedy this evident evil, it would be desirable to investigate the advisability of establishing distinct careers for the Antilles and for

the Philippines, without prejudice to the unity of the graded list, which at present exists.

If the supreme court is hierarchically superior to all other courts of the nation, both in the Peninsula and in the colonies, it would be advisable to have a chamber (*sala*) depending on the department of the colonies in the former, after the manner of the old chamber called the "Chamber of the Indies," which should be exclusively charged with all matters proceeding from these possessions; or, at least, if such reform is not feasible on account of financial considerations, it is reasonable that the secretary of the colonies should be entitled to appoint a just proportion of the vacancies of associate justices of that tribunal, in order to give a homogeneous character to the jurisprudence of the latter in reference to the special conditions of those countries, as well as in order to satisfy the legitimate aspirations of officials serving there.

The duties of judicial secretaries require habits acquired by practice, and conditions of stability which are at present lacking in the former, because their offices are included in the categories of the judicial career, to which they must pass in their respective succession; hence the necessity, which is imposed and which other considerations demand, of creating a special corps of judicial secretaries for all the grades of the administration of justice, from the municipal to the supreme court.

The establishment of rules for the substitution of judges, of associate justices, and of officials of the department of public prosecution, after investigation of the complaints arising on account of the system now in force in the colonies; the inclusion among the incompatibilities of that established by the law for the Indies, which prohibits the filling of offices in the career with persons whose relatives pursue in the same locality the profession of lawyer or solicitor, a preventive law the ignoring of which has been on more than one occasion a source of abuse rebuked by the public conscience; and the regulations for the transfer of personnel and for granting commissions, leaves, extensions, and dates of embarkation, the former being subjected to a system of guaranties against ministerial abuses, and the latter to conditions which would not permit arbitrary decisions and favoritism; all these are important points which can not be overlooked, some of which demand a deliberate study and a thoughtful solution. Finally, the regulations for the organization of the colonial courts, notwithstanding the provisional character which they must bear, must unite in themselves such conditions of foresight as are necessary to harmonize them, if not with the reforms which science prepares and reality reserves for the future, at least with the plan offered in the preamble of the royal decree of October 26, 1888, for local superior courts for judging minor offenses, with the institution of the jury in the Antilles which can not be delayed, and with the separation, in a short time, of civil and criminal jurisdiction in such localities of the Philippine Islands where the conditions permit it.

In view of the reasons stated above, it is the will of Her Majesty that the committee on codes for the colonies draft a project for the provisional organization of the courts of those provinces in which the above principles can be adopted, if a deliberate investigation of them demonstrates the advisability of their application.

I communicate this by royal order to Your Excellency, for your information and consequent effects, it being the will of Her Majesty that this order be published in the *Gaceta de Madrid* and in the official newspapers of the colonies.

May God guard Your Excellency many years.

BECERRA.

MADRID, *April 1, 1890.*

To the PRESIDENT OF THE COMMITTEE ON CODES OF THE COLONIES.

ORGANIC LAW FOR THE COLONIES.

COLONIAL DEPARTMENT.

ROYAL DECREE.

ARTICLE 1. The annexed compilation of the organic provisions for the administration of justice in the colonial provinces and possessions, drafted by the committee on codes of the colonies, is hereby approved.

ART. 2. This compilation shall be published in the *Gaceta de Madrid* and in the official *Gacetas* of the colonial provinces and possessions, with the character and force of law which was bestowed upon it by article 25 of the law of June 18, cited.

ART. 3. This legislative compilation shall become operative within twenty days from its respective promulgations, in accordance with the provisions of article 1 of the civil code.

ART. 4. The Government shall inform the Cortes of this decree and the compilation attached hereto.

Issued at the Palace on January 5, 1891.

MARÍA CRISTINA.

ANTONIO MARIA FABIÉ,
Secretary of the Colonies.

COMPILATION OF THE ORGANIC PROVISIONS CONCERNING THE ADMINISTRATION OF JUSTICE IN THE COLONIAL PROVINCES AND POSSESSIONS.

TITLE I.

PERSONNEL AND ORGANIZATION OF INFERIOR AND SUPERIOR COURTS.

CHAPTER I.

JUDICIAL TERRITORIAL DIVISION AND INFERIOR AND SUPERIOR COURTS.

ARTICLE 1. The territory of the Spanish colonial provinces shall be divided for judicial purposes into districts (*distritos*), subdistricts (*partidos*), and municipal districts (*terminos municipales*), with the territorial audiencias, the criminal audiencias, the courts of first instance and examination, and the municipal courts or those of justices of the peace, which at present exist.

ISLAND OF CUBA.

Territorial audiencia of Habana.

PERSONNEL.

One presiding judge.
Two presiding judges of chambers.
Nine associate justices (*magistrados*).
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
Five deputy assistant public prosecutors (*abogados fiscales*).
One secretary of administration.
One secretary of chamber.

INFERIOR COURTS WHICH IT INCLUDES.

Examining courts.....
- Eastern part of Habana (m-t).[1]
- Western part of Habana (m-t).
- Central part of Habana (m-t).

Courts of first instance.....
- Eastern part of Habana (m-t).
- Western part of Habana (m-t).
- Central part of Habana (m-t).
- Audiencia of Habana (m-t).

Bejucal (e).
Guanabacoa (e).

[1] The letters (e) (p) (f) placed after the name of a court denote that the courts belong, respectively, to the entrance (lowest), promotion (intermediate), or the final (highest) category; the letters (m-t) denote that the court is of the category of an associate justice of a territorial audiencia.

Güines (e).
Jaruco (e).
Marianao (e).
San Antonio de los Baños (e).

Territorial audiencia of Puerto Príncipe.

PERSONNEL.

One presiding judge.
One presiding judge of chamber.
Four associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One deputy assistant public prosecutor (*abogado fiscal*).
One secretary of administration.
One secretary of chamber.

INFERIOR COURTS WHICH IT INCLUDES.

Puerto Príncipe (f).
Morón (e).

Criminal audiencia of Matanzas.

PERSONNEL.

One presiding judge.
Two associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One secretary.
One vice-secretary.

INFERIOR COURTS WHICH IT INCLUDES.

Northern part of Matanzas (p).
Southern part of Matanzas (p).
Cárdenas (p).
Alfonso XII (e).
Colón (e).

Criminal audiencia of Pinar del Río.

PERSONNEL.

One presiding judge.
Two associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One secretary.
One vice-secretary.

INFERIOR COURTS WHICH IT INCLUDES.

Pinar del Río (p).
Guanajay (e).
Guane (e).
San Cristobal (e).

Criminal audiencia of Santa Clara

PERSONNEL.

One presiding judge.
Two associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One secretary.
One vice-secretary.

INFERIOR COURTS WHICH IT INCLUDES.

Santa Clara (p).
Cienfuegos (p).
Sagua la Grande (e).
San Juan de los Remedios (e).
Sancti Spiritus (e).
Trinidad (e).

Criminal audiencia of Santiago de Cuba.

PERSONNEL.

One presiding judge.
Two associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One secretary.
One vice-secretary.

INFERIOR COURTS WHICH IT INCLUDES.

Northern part of Santiago de Cuba (f).
Southern part of Santiago de Cuba (f).
Baracoa (e).
Bayamo (e).
Guantánamo (e).
Holguín (e).
Manzanillo (e).

ISLAND OF PUERTO RICO.

Territorial audiencia of San Juan de Puerto Rico.

PERSONNEL.

One presiding judge.
One president of chamber.

Four associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One deputy assistant public prosecutor (*abogado fiscal*).
One secretary of administration.

INFERIOR COURTS WHICH IT INCLUDES.

San Juan de Puerto Rico (examining) (f).
San Juan de Puerto Rico (first instance) (f).
Humacao (e).
Vega Baja (e).
Cayey (e).

Criminal audiencia of Ponce.

PERSONNEL.

One presiding judge.
Two associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One deputy assistant public prosecutor (*abogado fiscal*).
One secretary.

INFERIOR COURTS WHICH IT INCLUDES.

Ponce (f).
Coamo (e).
Guayama (e).

Criminal audiencia of Mayagüez.

PERSONNEL.

One presiding judge.
Two associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One deputy assistant public prosecutor (*abogado fiscal*).
One secretary.

INFERIOR COURTS WHICH IT INCLUDES.

Mayagüez (p).
Arecibo (p).
Aguadilla (e).
San German (e).

PHILIPPINE ISLANDS.

Territorial audiencia of Manila.

PERSONNEL.

One presiding judge.
Two presidents of chambers.

Eight associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
Three deputy assistant public prosecutors (*abogados fiscales*).
One secretary of administration.
Two secretaries of chamber.

INFERIOR COURTS WHICH IT INCLUDES.

Binondo de Manila (f).
Intramuros de Manila (f).
Quiapo de Manila (f).
Tondo de Manila (f).
Albay (f).
Bantangas (f).
Bulacán (f).
Ilocos Norte (f).
Ilocos Sur (f).
Laguna (f).
Pangasinán (f).
Pampanga (f).
Bataan (p).
Camarines Norte (p).
Camarines Sur (p).
Nueva Ecija (p).
Tayabas (p).
Unión (p).
Zambales (p).
Mindoro (p).
Abra (e).
Cagayán (e).
Cavite (e).
La Isabela (e).
Islas Batanes (e).
Islas Marianas (e).
Nueva Vizcaya (e).
Tarlac (e).

Territorial audiencia of Cebú.

PERSONNEL.

One presiding judge.
One president of chamber.
Four associate justices.
One public prosecutor (*fiscal*).
One assistant public prosecutor (*teniente fiscal*).
One secretary of administration.
One secretary of chamber.

INFERIOR COURTS WHICH IT INCLUDES.

Cebú (p).
Ilo-Ilo (p).
Antique (e).
Barotac Viejo (e).
Bohol (e).
Catamianes (e).
Cápiz (e).
Isla de Negros (e).
Leyte (e).
Misamis (e).
Samas (e).
Surigao (e).
Zamboanga (e).

ART. 2. The following are the grades of the judiciary in the colonies:

First. The presiding judge and presiding judges of chambers of the audiencia of Habana.

Second. The associate justices of the audiencia of Habana, and presiding judges of chambers of territorial audiencias.

Third. The associate justices of territorial audiencias, presiding judges of criminal audiencias, and judges in Habana.

Fourth. Associate justices of criminal audiencias.

Fifth. Judges of the final category.

Sixth. Judges of the promotion category.

Seventh. Judges of the entrance category.

The order of rank of officials of the department of public prosecution is as follows:

First. The public prosecutor (*fiscal*) of the audiencia of Habana.

Second. The assistant public prosecutor (*teniente fiscal*) of the audiencia of Habana and the public prosecutors (*fiscales*) of territorial audiencias.

Third. The public prosecutors (*fiscales*) of criminal audiencias.

Fourth. The assistant public prosecutors (*tenientes fiscales*) of territorial audiencias and deputy assistant public prosecutors (*abogados fiscales*) of the audiencia of Habana.

Fifth. The deputy assistant public prosecutors (*abogados fiscales*) of territorial audiencias and assistant public prosecutors (*tenientes fiscales*) of criminal audiencias.

Sixth. The deputy assistant public prosecutors (*abogados fiscales*) of criminal audiencias and deputy public prosecutors (*promotores fiscales*) of the final category in the Philippines.

Seventh. The deputy public prosecutors (*promotores fiscales*) of the promotion category in the Philippines.

Eighth. The deputy public prosecutors (*promotores fiscales*) of the entrance category in the same islands.

ART. 3. The first three offices in the careers of the judiciary and of the department of public prosecution correspond exactly with each

other; the fourth of the judicial career corresponds with the fourth of the department of public prosecution and to the secretaryship of administration of the audiencia of Habana; the fifth with the fifth, and the secretaryship of chamber of the same audiencia; the sixth with the sixth, and to the secretaryships of chamber and administration of territorial audiencias; the seventh with the seventh, and to the secretaries and vice-secretaries of criminal audiencias, and to the secretaries of examining courts; and the eighth of the career of public prosecution has no equivalent in the judicial career.

CHAPTER II.

AUDIENCIAS AND INFERIOR COURTS.

ART. 4. There shall be in the island of Cuba six audiencias, which shall be situated in Habana, Puerto Príncipe, Santiago de Cuba, Santa Clara, Matanzas, and Pinar del Rio.

The first two shall be territorial audiencias and the rest criminal audiencias, the audiencia of Habana preserving its category of superior (*de ascenso*) with respect to all the other audiencas of the colonies.

ART. 5. Each audiencia shall exercise jurisdiction in the territory of the inferior courts which are assigned to it.

ART. 6. The audiencia of Habana shall be composed of one presiding judge, two presiding judges of chamber, nine associate justices, one *fiscal*, one *teniente fiscal*, five *abogados fiscales*, and two secretaries, one of administration and another of chamber.

ART. 7. There shall be in the capital three courts of first instance, to be called eastern, western, and central, and four examining courts, called eastern, western, central, and audiencia, with the category of associate justices of territorial audiencias.

ART. 8. In the territory of the same audiencia there shall be, besides, six courts of first instance and examination, situated in Bejucal, Guanabacoa, Güines, Jaruco, Marianao, and San Antonio de los Baños, all of the entrance category.

ART. 9. Each examining court of Habana shall have two judicial secretaries with the rank of judge of the entrance category.

ART. 10. The territorial audiencia of Puerto Principe shall be composed of one presiding judge, one presiding judge of chamber, four associate justices, one *fiscal*, one *teniente fiscal*, one *abogado fiscal*, one secretary of administration and another of chamber.

ART. 11. The said audiencia shall include one court of first instance and examination, to be situated in Puerto Príncipe and to be called after that town, and another in Morón; the former of the final category and the latter of the entrance category.

ART. 12. The criminal audiencia of Matanzas shall be composed of one presiding judge, two associate justices, one *fiscal*, one *teniente fiscal*, one secretary and one vice-secretary, and shall comprise the following five courts: North Matanzas, South Matanzas, Cárdenas, Alfonso XII,

and Colón; the first three of the promotion category, and the last two of the entrance category.

ART. 13. The criminal audiencia of Pinar del Rio shall be composed of the same number and class of officials as the preceding one, and shall comprise four courts of first instance and examination, which shall be situated in Pinar del Rio, Guanajay, Guane, and San Cristobal; the first of these being of the promotion category and the rest of the entrance category.

ART. 14. The criminal audiencia of Santa Clara shall be composed of the same number and class of officials as the two preceding ones, and shall comprise six courts of first instance and examination, which shall be situated in Santa Clara, Cienfuegos, Sagua la Grande, San Juan de los Remedios, Sancti Spiritus, and Trinidad; the first two courts belonging to the promotion and the rest to the entrance category.

ART. 15. The criminal audiencia of Santiago de Cuba shall be composed of the same number and class of officials as the three preceding ones, and shall comprise seven courts of first instance and examination, which shall be situated, two in Santiago de Cuba, to be called northern and southern, Baracoa, Bayamo, Guantánamo, Holguín, and Manzanillo, the first two of the final and the rest of the entrance category.

ART. 16. In the island of Puerto Rico there shall be three audiencias—the territorial audiencia, which shall be situated in San Juan, and two criminal audiencias, one in Ponce and another in Mayagüez.

ART. 17. The first of the said audiencias shall be composed of one presiding judge, one presiding judge of chamber, four associate justices, one *fiscal*, one *teniente fiscal*, one *abogado fiscal*, and one secretary of administration, and shall comprise two inferior courts, one of first instance and another of examination, both situated in the capital of the island.

The latter shall have two judicial secretaries. The said audiencia shall comprise, besides, three inferior courts of first instance and examination of the entrance category, to be situated in Humacao, Vega Baja, and Cayey.

ART. 18. The criminal audiencia of Ponce shall be composed of one presiding judge, two associate justices, one *fiscal*, one *teniente fiscal*, one *abogado fiscal*, and one secretary. This audiencia shall comprise three courts of first instance and examination, situated in Ponce, Coamo, and Guyama, the first court belonging to the final and the other two to the entrance category.

ART. 19. The criminal audiencia of Mayagüez shall be composed of one presiding judge, two associate justices, one *fiscal*, one *teniente fiscal*, one *abogado fiscal*, and one secretary; and shall comprise four courts of first instance and examination, which shall be situated in Mayagüez, Arecibo, Aguadilla, and San Germán, the first two being of the promotion category and the last two of the entrance category.

ART. 20. The Philippines shall have two audiencias, both territorial, which shall be situated in Manila and in Cebú.

ART. 21. The audiencia of Manila shall be composed of one presiding judge, two presiding judges of chamber, eight associate justices, one *fiscal*, one *teniente fiscal*, three *abogados fiscales*, one secretary of administration, and two secretaries of chamber. This audiencia shall comprise four courts of first instance, in the capitals denominated Binondo, Intramuros, Quiapo, and Tondo; and besides, outside of the capital, those of Albay, Batangas, Bulacán, Ilocos Norte, Ilocos Sur, Laguna, Pangasinán, and Pampanga, of the final category; Bataan, Camarines Norte, Camarines Sur, Nueva Ecija, Tayabas, Unión, Zambales, and Mindoro, of the promotion category; and Abrá, Cagayén, Cavite, La Isabela, the Batanes Islands, Marianas Islands, Nueva Vizcaya, and Tarlac, of the entrance category.

ART. 22. The territorial audiencia of Cebú shall be composed of one presiding judge, one presiding judge of chamber, four associate justices, one *fiscal*, one *teniente fiscal*, one *abogado fiscal*, one secretary of administration, and another of chamber.

This audiencia shall comprise the courts of first instance of Cebú and Iloilo, of the promotion category; and Antique, Borotac Viejo, Bohol, Calamianes, Cápiz, Negros Island, Leyte, Misamis, Sámar, Surigao, and Zamboanga, of the entrance category.

The actual organization of inferior courts of first instance and of courts of justices of the peace in the Philippine Islands shall be preserved until the law of criminal procedure in force in the Peninsula and in the islands of Cuba and Puerto Rico is extended to the Philippines.

ART. 23. In each territorial audiencia there shall be a chamber of administration and those of justice designated in this decree law.

ART. 24. The chamber of administration shall be composed of the presiding judge, the presiding judges of chamber, and the *fiscal* of each audiencia.

ART. 25. In the audiencias of Habana and Manila there shall be two chambers of justice, one civil and the other criminal; and in the audiencias of Puerto Príncipe, Puerto Rico, and Cebú one chamber for both civil and criminal jurisdiction.

ART. 26. There shall be no other precedence among the associate justices composing the chambers of the audiencias than that corresponding to their offices and seniority.

The civil and criminal chambers shall aid each other in the transaction of the business of their respective competency whenever necessary.

Associate justices of either chamber, when not indispensable to form a quorum in their own chambers, shall act as substitutes for the associate justices of the other ones who may be absent or prevented from attending.

Whenever an accumulation of criminal causes in any audiencia renders such action necessary or convenient, a new chamber may be organized, which shall take the number following that of the last of the regularly organized chambers to assist the latter, provided there are enough associate justices for its organization.

ART. 27. The audiencias shall administer justice in the capital of the district.

ART. 28. In the absence of the presiding judge of the chamber, the senior associate justice of the same shall preside in his stead.

ART. 29. In accordance with the present judicial division the number of districts, subdistricts, and municipal districts can not be reduced or increased, nor can territory of one district be taken away from the same and added to another one, nor can the capital of a district or the seat of a subdistrict or municipal district be transferred to another place, except in accordance with the provisions of the next article.

ART. 30. Nor can any towns be separated from their subdistricts or municipal districts in order to be joined to other ones, nor reduce or increase the number of towns in which ordinary or extraordinary chambers of audiencias may be organized, except under the following circumstances and in accordance with the following rules:

1. That there exist reasons of public convenience sufficiently justified in the proceedings instituted in the colonial department.
2. That the municipal councils of the interested towns and the provincial deputation be given a hearing in said proceedings.
3. That the judges of first instance of the interested districts and the chamber of administration of the proper audiencia report on the utility, advantages, or disadvantages of the change.
4. That in no case towns be united in one subdistrict belonging to different provinces.
5. That the council of state be heard.
6. That it be resolved by the council of ministers.

ART. 31. The Royal decree establishing a change shall be countersigned by the secretary of the colonies.

CHAPTER III.

SUBSTITUTE JUDGES AND ASSOCIATE JUSTICES.

ART. 32. In each municipal court there shall be one substitute judge, who shall fill the place of the incumbent in cases of vacation, sickness, absence, incompatibility, challenge, or any other legitimate impediment of the incumbent.

ART. 33. Every municipal judge before taking possession of his office, or, at the most, within eight days following the one on which he shall have done so, shall propose three persons from whom one shall be elected as a substitute, stating the qualifications which determine his legal capacity and the respective preference among the persons proposed.

He shall submit this recommendation to the presiding judge of the audiencia through the judge of first instance of the district, who shall forward it with his report.

ART. 34. Substitute municipal judges shall be subject to all the provisions of this decree-law relating to the obligatory nature of the office, to the legal capacity necessary for obtaining the same, to its term,

exemptions, incompatibilities, claims, and to the vacancies that may occur before the end of the ordinary term of their functions.

ART. 35. Whenever both the office of the municipal judge and that of his substitute become simultaneously vacant, or when on account of any of the causes mentioned in the law neither of them is able to discharge his duties, they shall be substituted by such persons as have held the office of municipal judge in the years immediately preceding, in inverse order, substitute judges, however, being excluded.

ART. 36. The municipal judges of the chief towns of districts if they be lawyers, and otherwise their substitutes who are such, shall substitute the judges of first instance and of examination.

No one possessing the qualifications mentioned above can excuse himself from the performance of the duties of substitute.

ART. 37. If neither the municipal judges nor their substitutes are lawyers, a report shall be made to the presiding judge of the audiencia, in order that he may appoint a lawyer to take charge of the court of first instance and of examination, the municipal judge in the meantime discharging his duties.

ART. 38. Municipal judges, who, not being lawyers, discharge temporarily the duties appertaining to courts of first instance or examination, shall employ lawyers as advisers in everything which is not of mere routine.

When this occurs the salary which would be due the municipal judge for his duties as examining judge or judge of first instance shall be used, as far as possible, for the payment of the fees which the judge's adviser earns.

ART. 39. While the municipal judge is discharging the duties of an examining judge or judge of first instance, his own duties shall be attended to by a substitute.

ART. 40. There shall be substitute associate justices in the audiencias, who shall be called upon to render services in chambers of justice, in cases when for accidental reasons the number of regular judges is insufficient to such an extent that the administration of justice would be delayed on that account.

Substitute associate justices shall be appointed by the Governor-General of the island, at the suggestion of the proper chambers of administration, and their appointment shall be made for the succeeding judicial year.

The number of persons selected can never exceed one-third of the number of associate justices assigned to the respective court.

ART. 41. The office of substitute associate justices of audiencias may be assigned only to the associate justices of the local courts of administrative litigation (*contencioso administrativo*), to persons who had been deans of the bar, or in default of both, to lawyers who may have practiced their profession for a long time, in a creditable manner, and paying the highest taxes.

The substitute associate justices, while attending a court, shall enjoy the same privileges and shall wear the same insignia as the regular associate justices.

Lawyers who have obtained said appointments shall have credited to them, in so far as passive rights are concerned, one-third of the time during which they have served as substitutes, or the greater time during which they really served; and if they practice the profession of attorney, they shall be considered in the same manner as though paying the highest quota of taxes, as long as they remain as substitute judges, in order that they may acquire the qualifications necessary to be appointed associate justices of criminal and territorial audiencias, or officials equal to them in the rank of lawyers.

TITLE II.

CONDITIONS NECESSARY FOR ADMISSION AND PROMOTION IN THE JUDICIARY, MAGISTRACY, AND DEPARTMENT OF PUBLIC PROSECUTION, AND COMMON AND SPECIAL CONDITIONS FOR THE VARIOUS JUDICIAL OFFICES.

CHAPTER I.

CONDITIONS NECESSARY FOR ADMISSION AND PROMOTION IN THE JUDICIARY, MAGISTRACY, AND DEPARTMENT OF PUBLIC PROSECUTION.

ART. 42. The entrance to the judiciary and to the department of public prosecution shall be according to the following categories:

1. Judges of the entrance category, deputy public prosecutors (*promotores fiscales*) of the promotion category, secretaries of examining courts, secretaries and vice-secretaries of criminal audiencias.

2. *Promotores fiscales* of the entrance category.

ART. 43. Admission in, promotion to, and filling vacancies of whatsoever category or class shall be effected in the manner and subject to the laws established, or which may in the future be established for the Peninsula, in so far as the special organization of courts in the colonial provinces does not conflict with the same.

ART. 44. In cases when competitive examinations are held, there shall be observed with reference to the same the provisions of the following articles:

ART. 45. The competitive examinations to fill the offices mentioned in article 42 shall be called when required by the needs of the service and for the vacancies existing at the time, including at the same time those in the judiciary and in the department of public prosecution.

If the number of vacancies does not reach fifty the call shall be made for this number at least.

ART. 46. The competitive examinations shall be held, whenever called for, in the Peninsula, Cuba, Puerto Rico, and the Philippines.

ART. 47. A call for competitive examinations shall be made by the secretary of the colonies, who shall forward the proper orders to

the general direction of grace and justice of the department and to the respective governors-general of the colonial provinces, which shall be published in the official *Gacetas.*

ART. 48. In filling every 50 vacancies, 30 vacancies shall be awarded to the competitors of the Peninsula, 10 to the competitors of Cuba, 5 to the competitors of Puerto Rico, and 5 to those from the Philippines, distributing any higher number there may be in the same proportion.

ART. 49. The period allowed for filing petitions for admission to competitive examinations shall be forty-five days for those to be held in the Peninsula, and thirty days for those to be held in the Antilles or in the Philippines, counted from the day following the one on which the announcement of the examination was published in the respective official *Gacetas.*

ART. 50. In order to be admitted to the competitive examinations it is necessary to be a Spaniard, a layman, and a licentiate at law, graduated from a university conducted at the expense of the State, and to be 23 years of age before the day on which the examinations begin.

The following persons can not be admitted to the said examinations:

1. Those physically or mentally incapacitated.
2. Those who have been prosecuted for any crime.
3. Those who have been condemned to any correctional or corporal punishment.
4. Those who may have suffered and undergone a punishment which lowers them in the public esteem.
5. Those who have been subjected to a provisional suspension of proceedings (*sobreseimiento*) in a criminal cause, before this action has been converted into an acquittal by reason of lapse of time.
6. Bankrupts who have not been discharged.
7. Insolvents, until they are declared innocent.
8. Debtors to Government funds as taxpayers.
9. Those who have been guilty of acts or omissions which, though not punishable, lower them in the public esteem.

ART. 51. Those desiring to enter the judicial or the public prosecution careers shall prove the facts stated in the first part of the preceding article to the general direction of grace and justice, or to the respective governors-general, according as to whether the examinations are to be held in the Peninsula or in the colonies.

Proceedings shall be instituted for each candidate.

The lists of persons admitted to the competitive examinations shall be published in the respective official *Gacetas.*

ART. 52. The board of examiners for the competitive examinations to be held in the Peninsula shall consist of—

The presiding judge of the supreme court, who shall act as the president of the said board.

The *Fiscal* of the supreme court.

Two associate justices of the same court or of the audiencia of Madrid, appointed by the secretary of the colonies.

The dean of the bar of Madrid.

A lawyer appointed by the secretary of the colonies, upon the recommendation of the bar, from among those who pay, as lawyers, one of the first three quotas of industrial subsidies.

A professor of law of the central university, appointed by the secretary of the colonies.

And one lawyer, as secretary, with the right to vote, appointed by the secretary of the colonies.

ART. 53. The board of examiners for examinations to be held in Cuba, Puerto Rico, or the Philippines, shall consist of:

The presiding judge of the audiencia of Habana, Puerto Rico, or Manila, who shall act as the president of the respective board.

The *Fiscal* of the corresponding audiencia.

An associate justice of audiencia, appointed by the respective Governor-General.

A professor of the university or institute, who shall be a lawyer, appointed by the Governor-General.

A counselor of administration, lawyer, or associate justice of the administrative court, appointed by the Governor-General.

A lawyer, appointed by the said Governor-General, on the recommendation of the bar.

A lawyer, as secretary, with the right to vote, appointed in the same manner.

ART. 54. The members of the board of examiners, who are not such ex officio, shall cease to exercise their duties when a new examination is held unless they are reappointed.

ART. 55. In case the presiding judge or the *Fiscal* of the supreme court, the presiding judge or the *Fiscal* of the audiencia, or the dean of the bar can not attend the board of examiners, on account of incompatibility or for any other reason whatsoever, they shall be substituted as follows:

The presiding judge of the supreme court or of the audiencia, by a presiding judge of chamber of the respective court, appointed by the department, or by the Governor-General, if proper.

The *Fiscal* of the supreme court and the *Fiscal* of an audiencia, by the *teniente fiscal* of the same court, and, in the latter's absence, by one of the *abogados fiscales*, appointed by the department, or by the respective Governor-General.

The dean of the bar, by a member of its administrative board, appointed in a similar manner.

ART. 56. The list of the competitors admitted to examination shall be forwarded, with the proceedings instituted, to the proper court.

ART. 57. On the same day on which a call for competitive examinations is published in the proper official newspaper, the appointment of the board which is to judge the same shall also be published.

The board shall draft a programme of the competitive examinations within the twenty days following said publication, giving preference

to the civil, penal, commercial laws, and law on procedures, publishing it also in the official *Gaceta*.

ART. 58. Before an examination begins, competitors shall be numbered by drawing lots in public.

A competitor who, being called by the number drawn by lot, does not present himself shall be called a second time after the last number on the list, and if he again fails to appear, he shall lose all right to be examined.

ART. 59. The examinations shall be public; the first part shall be oral and the second part written.

ART. 60. The first part of an examination shall consist in answering, without previous preparation, ten questions, on subjects agreed upon by the board, and in the proportion designated by the same.

The time allowed for answering these questions shall not exceed an hour and a half.

ART. 61. The second part of the examination shall consist in the drafting of a sentence, decision, or complaint in a civil or criminal cause, which shall be decided by lot.

To prepare this work, the presidents of the boards shall ask the presiding judges of the respective audiencias for a number of sets of papers equal to twice the number of competitors.

These papers, arranged in such a manner that they shall conceal from view the work of which the exercises are to consist, shall be kept by the president of the board with the greatest care.

For drafting the decision, complaint, or sentence, of which the examination is to consist, competitors shall be kept separated in rooms for this purpose, and shall be allowed four hours of preparation, and shall have at their disposal the legal texts they may request.

After the four hours have passed the competitors shall deliver their work in an envelope, closed, sealed, and with their signatures on the outside; and when the board has convened, every competitor shall open his papers and read his work, afterwards leaving the papers in the hands of the president.

ART. 62. After the examinations of each day have been ended, the board shall immediately proceed in secret session to rate the competitors according to their merits by using one of the following two marks: *Passed* or *rejected*, and shall post the result of this action on the door of the building in which the examinations are held. When all the examinations have been finished, the board shall, in secret session, classify the competitors in correlative numerical order, submitting its recommendation to the secretary of the colonies.

Under no consideration shall the number of places announced for a competitive examination be increased; and the boards shall abstain from submitting in their recommendations a number of competitors greater than that of the positions for which the examinations have been held.

ART. 63. After the examinations have concluded, the lists and papers relating to the competitors shall be forwarded to the secretary of the colonies, those who have passed being named in the numerical order they bear in the lists drafted by the boards of examiners, and in accordance with the provisions of the following articles.

ART. 64. After the certification of the competitors who passed has been received by the department, the standing of the eligibles shall be drafted and published in the respective official *Gacetas*, subject to the following rules:

The list shall begin with the names of the competitors from the Peninsula, who shall be given the first three numbers; these shall be followed by the eligibles awarded number one in Cuba, Puerto Rico, and the Philippines, successively, the remainder of the list being numbered in the same proportion to the end.

ART. 65. Notwithstanding the provisions of Article 43, there shall be a preferred appointment, in which there shall be appointed as *promotores fiscales* of the entrance category those who have been suspended with salary of the same category in good standing, who may have requested the appointment.

ART. 66. Notwithstanding the provisions of article 43, there shall be an appointment by preference in which *promotores fiscales* of the entrance category of the greatest seniority, who have served one year in their office. shall be appointed to the positions of judges of the entrance category.

ART. 67. Positions of judges of the entrance category and similar ones and offices of *promotores fiscales*, which must be filled by competitive examinations, shall be distributed in the following manner:

The former shall be given to the competitors who hold the first numbers on the graded list, in strict order; and the latter shall, in the same manner, be distributed among the remaining competitors who may have a right thereto, without prejudice in either case to the provisions of articles 43, 65, and 66 of this decree-law.

ART. 68. The competitors appointed to the Antilles, or to the Philippines, may either accept or refuse the office conferred upon them until there occur vacancies in their category at one of the two places above mentioned which they may prefer.

Those who are entitled to the position of *promotor fiscal* of the entrance category may likewise refuse or accept the same, until a vacancy of the category of judge of the entrance category occurs, for which, as in the preceding case, the competitor who has on the list a higher number shall be preferred to the one who has a lower number.

The right granted by this article shall terminate on the date on which the last position to be filled has been voluntarily accepted by the eligibles, it being understood that those appointed for the second time, in the proper order, who do not accept the offices to which they have been assigned, shall be considered as renouncing the career.

ART. 69. Officers who pass from one class to another shall preserve in the latter the seniority according to their category; and if they accept commissions for duties of a lower category they shall occupy the first place among the officers of the latter.

Appointments made for those going on a commission shall not deprive the appointees of their regular order of succession for appointments.

ART. 70. The colonial department shall keep the proper books of the personnel, with a suitable distribution of categories and series of succession, and an exact memorandum of the vacancies corresponding to each of them.

There shall likewise be kept the books concerning officers suspended with pay, in which there shall be entered the requests of those who desire to reenter the service, with discrimination between those who wish to serve in the Antilles or in the Philippines; and books of active officers who do not desire to be promoted outside of the Antilles or of the Philippines, where they are respectively on duty, and of lawyers who have already requested admission in the proper series of succession.

ART. 71. If in one or more series of succession there should be no officials with the legal ability necessary to discharge the duties of the office to be filled, said series of succession shall be considered as passed over and it shall thus appear in the respective books, the vacancy being filled from the following series of succession in their order.

ART. 72. The officials in the Antilles, to whom the series of promotion belongs in the Philippines, and vice versa, may have previously renounced such promotions by an official communication to this effect to the colonial department for the case in which by virtue of the same they would be obliged to pass from one of the above-mentioned places to another one; and the Government shall take into account said communication, if it deems it proper, when the respective series of succession is reached. This provision, however, is without prejudice to the right to transfer officers to any place whatever, from one point to another of the same category whenever considered advisable for the better service.

CHAPTER II.

CONDITIONS COMMON TO ALL JUDICIAL OFFICES.

ART. 73. In order to be a judge or an associate justice of whatsoever class or denomination, it is necessary:

1. To be a Spaniard and a layman.
2. To be twenty-five years of age.
3. Not to be included in any of the cases of incapacity or incompatibility established by this decree-law.
4. To possess the conditions established for each class of offices in the same.

ART. 74. No persons included in any of the cases enumerated in article 50 of this decree-law can be appointed judges or associate justices.

ART. 75. The offices of judges and associate justices shall be incompatible:

1. With the exercise of any other jurisdiction.

2. With other employments or offices endowed or recompensed by the State, provinces, or towns.

3. With the offices of provincial deputies, alcaldes, city magistrates (*regidores*), or any other provincial or municipal offices.

4. With subordinate employments in superior or inferior courts.

ART. 76. The discharge of judicial duties shall be a justifiable cause to exempt one's self from the obligatory offices mentioned in number 3 of the preceding article.

The authority whose duty it is to admit the exemption can not refuse it.

If anyone within eight days does not show cause for exemption from the said offices, it shall be construed that he has renounced the judicial position, which shall thereupon become vacant by law.

ART. 77. Those who are appointed as judges or as associate justices, while holding any employment or office of those mentioned in article 75, may exempt themselves from either of the offices or employments within the period of eight days following that of their appointment.

Should they not do so, it shall be construed that they have renounced the judicial office.

ART. 78. Persons related to each other within the fourth civil degree of consanguinity and the second degree of affinity can not serve as associate justices in the same court simultaneously.

This provision shall be applicable to the associate justices who are related in the degrees mentioned with the *fiscales*, *tenientes fiscales*, *abogados fiscales*, or auxiliary officers of the same court.

It shall also be applicable when the relationship within the same degrees is between municipal judges or justices of the peace and judges of first instance and examination with the *fiscales* of the same court, or of any court, with the associate justices of the respective audiencia.

ART. 79. In the cases mentioned in the preceding article, an appointment made of a person who has relatives with which the appointee is incompatible discharging judicial or public prosecution services, according to the provisions of the preceding article, shall be considered void.

CHAPTER III.

CONDITIONS COMMON TO EXAMINING JUDGES, JUDGES OF FIRST INSTANCE, AND ASSOCIATE JUSTICES.

ART. 80. No one can be an examining judge, judge of first instance, or associate justice of an audiencia, to the jurisdiction of which there belong:

1. The town where he or his wife was born, except in the case when declared to have been born during the temporary residence of the mother.

2. The town in which he or his wife has resided the five successive years previous to the appointment.

3. The town in which at the time of appointment he may pursue any industry, trade, or any remunerative occupation.

4. The town in which he, or his wife, or his or her relatives, in a direct or indirect line, within the fourth civil degree of consanguinity and the second degree of affinity, possess real estate, or pursue any industry, trade, or remunerative occupation.

5. The town in which he practiced law for the two years previous to his appointment.

6. The town in which he may have acted as auxiliary or subordinate officer of a superior or inferior court.

ART. 81. The provisions of the preceding article shall not apply to the offices of judges or associate justices serving in Habana.

ART. 82. The following officers can not pursue, either in their own behalf, or in behalf of their wives, or in the name of another person, any industry, trade, or remunerative occupation, or take part in commercial enterprises or corporations as joint partners or as managers, administrators, or advisors:

1. Examining judges or judges of first instance in the district over which their jurisdiction extends.

2. Associate justices of audiencias within the district over which their jurisdiction extends.

ART. 83. Those who violate the provisions of the preceding article shall be considered as renouncing the office they may hold.

CHAPTER IV.

SPECIAL CONDITIONS TO WHICH MUNICIPAL JUDGES OR JUSTICES OF THE PEACE ARE SUBJECT.

ART. 84. Municipal judges, justices of the peace, and their substitutes, must, besides the qualifications fixed by article 73, know how to read and write, and reside in the town in which they discharge their duties.

ART. 85. Wherever there are lawyers qualified for the offices of municipal judges, or justices of the peace, they shall be preferred for the said positions over others who are not such, provided there are no reasons advising the contrary.

TITLE III.

APPOINTMENTS, OATHS, AND ASSUMPTION OF OFFICE, SENIORITY AND PRECEDENCE, LIMITS AND EXTENSIONS OF THE TIME OF EMBARKATION AND TAKING PERSONAL POSSESSION OF OFFICE, HONORS, DRESS, AND SALARIES OF JUDICIAL OFFICIALS.

CHAPTER I.

APPOINTMENT OF MUNICIPAL JUDGES OR JUSTICES OF THE PEACE.

ART. 86. Municipal judges in the islands of Cuba and Puerto Rico, justices of the peace in the Philippines, and their respective substitutes,

shall be appointed by the presiding judges of territorial audiencias on the recommendation in ternary made by judges of first instance of the subdistrict, during the first fifteen days of the month of May in the years in which renewal of appointments should be made.

ART. 87. In order to make their recommendation effective judges of first instance may, if they consider it necessary or advisable, request information of any judicial or administrative authority, or from any trustworthy persons.

No judicial or administrative authority can refuse to render assistance in the matter.

ART. 88. In their recommendation, judges of first instance shall state the circumstances which determine the legal fitness of the persons proposed and any other qualifications which recommend these persons for the office.

ART. 89. In towns which have more than one court of first instance, each judge shall recommend persons for the offices of municipal judges or justices of the peace, according as to whether judges of the Antilles or those of the Philippine Archipelago are in question, for that part of the town which is subject to their jurisdiction.

ART. 90. Presiding judges of audiencias may, when they consider it advisable, request information concerning the qualifications of the persons recommended, in the manner mentioned in article 87.

ART. 91. When presiding judges of audiencias find that the recommendations are executed in conformity with law, and if they do not make use of the privilege granted them in the preceding article, or if doing so, they are of the opinion that all the candidates proposed are fit for the position, they shall make the appointment within the first fifteen days of the month of June.

ART. 92. If one or more of the candidates proposed do not possess the legal fitness, while others do, the presiding judges of audiencias may make the appointment from among the qualified candidates, or they may order the ternary proposal completed by substituting for the candidates who are not qualified for the office those who have the legal qualifications.

When all of the persons proposed do not possess the legal fitness, the ternary recommendations shall be returned at once, so that they may be redrafted.

ART. 93. The appointments of municipal judges or justices of the peace shall be published in detail in the official *Gacetas* of Cuba, Puerto Rico, and the Philippines, respectively.

ART. 94. Municipal judges or justices of the peace elect who are disqualified from discharging the duties of the office, or are exempt from these duties, may request the presiding judge of the audiencia to declare their exemption.

This request shall be made through the judge of first instance of the district in which is situated the town for which the petitioners may

have been appointed, within the eight days following the one on which they were notified of their appointment.

ART. 95. Those who are aware of any impediments that would prevent any appointee from performing the duties of a municipal judge or justice of the peace, shall state them to the presiding judge of the audiencia through the judge of first instance of the respective district within the period specified in the preceding article.

ART. 96. The judge of first instance shall forward as soon as possible to the presiding judge of the audiencia the requests and claims mentioned in the preceding articles, with the report he may deem proper.

ART. 97. The presiding judge of the audiencia, in view of the excuses or claims which may have been presented to him, hearing the public prosecutor and the chamber of administration whenever he deems this advisable, shall declare as may be proper:

1. The acceptance of the excuse or of the claim, in which case the appointment shall be void, and another shall be made.

2. The nonacceptance of the excuse or claim.

3. The verification and proof of the facts alleged or denounced. In the latter case the appointee shall not be given possession, if it has not yet been done until the case is decided; and if the appointee has already taken possession of his office, he shall continue to discharge the same until a decision is rendered.

ART. 98. Before July 15 the presiding judge of the audiencia shall decide all pending claims and shall order the publication in the respective official *Gaceta* of the corrections which have been finally made.

ART. 99. Those who have learned, after the municipal judges or justices of the peace have been appointed, that some of them are legally incapacitated to discharge their duties, may at any time inform the presiding judge of the audiencia to this effect, who, after gathering such information as he thinks necessary, and always a report of the judge of first instance of the district, and after hearing the opinion of the chamber of administration, he shall decide what may be proper.

ART. 100. Decisions admitting or overruling exceptions or claims shall always state the reasons.

ART. 101. From the decisions of presiding judges of the audiencias accepting or overruling allegations of exemptions or claims, an appeal may be taken only to the colonial department.

ART. 102. Vacancies occurring during the term of the two years fixed for municipal judges or justices of the peace to occupy their office shall be filled by the presiding judges of the audiencias, after the proceedings established in the preceding articles, in connection with the appointment, as well as in claims and exemptions, but without being subjected to the limits of time fixed in those articles.

ART. 103. Appointees for such vacancies shall cease to discharge their duties, if not reappointed, at the expiration of the term of the two years during which their predecessors should have discharged said duties.

ART. 104. The presiding judges of audiencias shall forward the appointments of municipal judges, or of justices of the peace, and their substitutes, to the judge of first instance, who shall inform the respective municipal courts or courts of justices of the peace, and also the appointees.

CHAPTER II.

APPOINTMENT OF JUDGES OF FIRST INSTANCE AND EXAMINATION, OF ASSOCIATE JUSTICES, AND OTHER JUDICIAL OFFICERS.

ART. 105. The appointments of judicial officers, from associate justices of criminal audiencias, inclusive, and up, shall be made by royal decree.

All other appointments shall be made by royal order.

In all the appointments included in this article the special conditions shall be stated by virtue of which the respective entrances and promotions take place.

ART. 106. Appointments of judicial officers of those newly admitted can not be made without previously instituting the proper proceedings which prove that the candidate possesses all the qualifications required by this decree-law, and the interested party shall make known by means of public and solemn documents all his qualifications for entering the career, and the special merits which commend him for the office and which may give him preference.

ART. 107. The Government shall report on the appointments of judicial officers to the proper Governor-General and to the presiding judge of the territorial audiencia, in order that the appointment may go into effect after the latter in a proper case informs the audiencia which receives oaths and gives or orders the possession of office to be given.

The Government shall likewise notify the appointees of their respective appointments.

ART. 108. The territorial audiencias *in banc* shall have the power to resolve upon the carrying out of appointments of judges and associate justices, and for this purpose the presiding judges shall order that all appointments be forwarded to the department of public prosecution for report.

When the report has been made by the department of public prosecution, an account of it shall be given to the proper court, which, if the appointment is found to be legal, shall order that it be carried into effect.

If the audiencias refuse to carry said appointment into effect, they shall respectfully submit to the Government the statement of the reasons for such action, and the Government, after hearing the full council of state, shall decide what may be proper in the council of secretaries. In the latter case the court shall obey the decision, without prejudice to the ministerial liability, if there be any ground for it.

CHAPTER III.

OATHS AND TAKING POSSESSION OF THE OFFICES OF JUDGES AND ASSOCIATE JUSTICES.

ART. 109. Municipal judges or justices of the peace shall take the customary oath, in order to take possession of their office, in the following manner:

Those of towns that are not seats of subdistricts before the judges who retire, or, in the absence of the latter, before their substitutes, at the place assigned for the sessions of the court.

Those of towns which are the seats of subdistricts and their substitutes, before the proper judge of first instance.

ART. 110. Municipal judges or justices of the peace and their substitutes in towns in which no judges of first instance reside, shall take possession of their offices at the time of taking their oaths; those of towns in which judges of first instance reside shall take possession of their offices after being sworn in, going for this purpose to the place assigned for the sessions of their courts and stating this in the proper memorandum.

ART. 111. Judges of first instance and examination and associate justices shall be sworn in, the former before the chamber of administration of the territorial audiencia to which the courts these judges have been appointed to appertain, and associate justices before the courts convened *in banc* and in a public session, attended by the representatives of the department of public prosecution and by all the subordinates and auxiliaries.

ART. 112. The form of oath to be taken by judicial officers shall be:

To observe and cause to be observed the constitution of the monarchy.

To be faithful to the King.

To administer strict, full, and impartial justice.

To fulfill all the laws and provisions relating to the discharge of their office.

ART. 113. Judicial officers shall take possession of their offices in the place assigned for their respective residences.

ART. 114. Judges of first instance and examination shall be installed by those who serve in the particular jurisdiction.

Associated justices, whatever their rank may be, shall take possession of the office immediately on taking oath.

ART. 115. During the act of swearing in and the installation of the presiding judges of the audiencias there shall be present the municipal judges or justices of the peace, and delegations from the bar, and from the associations of notaries and solicitors.

CHAPTER IV.

SENIORITY AND PRECEDENCE OF JUDICIAL OFFICERS.

ART. 116. Personal possession is that which entitles an incumbent to the pay and extra pay, as well as to the considerations attached to offices of the judicial career.

By personal possession is understood to be that granted by the respective chiefs and authorities.

ART. 117. Judicial officers who embark in the Peninsula or abroad or in any colonial province in order to sail directly to the place of their employment, shall enjoy from the date of embarkation, after the proper proof has been made, the personal salary of the class and office to which they may have been appointed, and shall acquire the seniority in the proper category, and all the other privileges appertaining to them in the capacity of colonial employes, provided that they take personal possession of their offices within the period specified in this decree-law.

In case of death during the voyage or passage or on arrival before taking personal possession of the office, the office shall be considered as taken possession of on the day of embarkation, with a right to all the resulting rights.

ART. 118. Of two officers embarking on the same date the senior one in the category shall be the one first appointed. If the appointments are of the same date the officer who takes personal possession of his office at an earlier date shall be considered the senior in the respective class, and in case of equality of conditions seniority shall be conceded to the one who shall have served a longer number of years in the next lower category.

If even in the latter respect the officers are on an equality, their respective seniority shall be determined on the basis of the period of their service in the judicial service or that of public prosecution.

In case these services are equal the oldest officer shall be considered the senior one.

ART. 119. Seniority shall give preference:

1. In the order of seats and positions among the judges and associate justices of the same class.

2. For temporarily presiding at chambers among the associate justices composing the same in cases of vacancies or any other impediment of the regular presiding judge.

3. For temporarily presiding in audiencias among the presiding judges of chambers in a case similar to that referred to in the preceding number.

4. In choosing one to attend the chamber of administration when one of the presiding judges who should compose it is absent, from among the associate justices forming the chamber of justice whose presiding judge may be absent.

CHAPTER V.

LIMIT OF TIME AND POSTPONEMENT OF EMBARKATION AND OF TAKING PERSONAL POSSESSION.

ART. 120. The periods within which embarkation of judicial officers designated for the colonies should take place shall be in accordance with the following rules:

1. Officers of recent entrance in the career who have to embark in

Europe shall certify by the respective captain of the port or consul that they have done so within the period of forty-five or sixty days, which can not be extended, counted from the date of the appointment, according as to whether they are destined for the Antilles or the Philippines, respectively.

2. Those who have been designated to an island different from that in which they reside or serve shall embark for their new destination within the period of thirty days, which may be increased by another equal period, which can not be extended, and which will be granted at the discretion of the proper Governor-General, the special circumstances of each case being taken into account. The first period referred to shall be computed from the day following that on which approval was made of the order which gave rise to the embarkation.

The officers referred to in the preceding paragraph may remain in the Peninsula for the periods specified in article 126 of this decree-law.

ART. 121. When the lack of means of communication absolutely prevents the fulfillment of the provisions of this decree-law referring to periods of embarkation and taking personal possession of offices, the Governor-General shall assign the period which he considers necessary, according to the circumstances, in order that the officers may be able to report for duty.

ART. 122. In the copies of appointments made by the colonial department the period for embarkation shall always be fixed in accordance with rule 1 of article 120.

ART. 123. Notwithstanding the provisions of the preceding articles, the appointees may be obliged to embark within any other periods shorter than those fixed, if special circumstances so require.

The preceding precept may likewise be applied to the periods allowed for taking personal possession of office.

ART. 124. A promoted or transferred employe, who is retired within the period of presentation, shall receive the salary of the office previously occupied until the date on which he is declared suspended with pay or pensioned.

ART. 125. Judicial officers shall take personal possession of their offices within the period of thirty days following the one on which the royal command is approved, or the date on which the officer has landed on the island to which he is appointed, according as to whether the appointees come from the same island to which they are assigned or not.

The period specified in this article may be extended by another period of an equal length, which can not be extended, and which shall be granted at the discretion of the proper Governor-General, when there are grounds sufficiently justified for such action.

ART. 126. Officers transferred from the Philippines to the Antilles, or vice versa, may remain in Europe thirty days, computed from the day of their landing, with the right to the salary of their new office

from the date of their departure from the point of the residence of the one they previously held, provided that they take possession of the former.

If, however, this period has elapsed, and the officer does not continue his journey, it shall be construed that he renounces the service, except when the Government authorizes him to stay thirty days longer, such action being based on the fact that the officer could not embark on account of sickness or any other cause duly proved, in which case the officer shall continue to draw the personal salary.

ART. 127. If officers have exceeded the periods of time allowed them in the respective cases fixed in this chapter, their appointments shall become void, and said officers shall be declared suspended, with pay, when such action is proper, and in this case new appointments may be given them, when opportunity offers, in the series of succession of officers suspended with pay.

CHAPTER VI.

HONORS OF JUDGES AND ASSOCIATE JUSTICES.

ART. 128. Courts shall be addressed orally and in writing by impersonal titles (*tratamiento impersonal*).

ART. 129. Examining and first instance judges shall have in official actions the title of *Señoria*

ART. 130. Associate justices and presiding judges of chambers of audiencias shall have the personal title of *Señoria.*

ART. 131. Presiding judges of territorial audiencias and those of chambers of Habana shall be given the title of *Señoria ilustrísima.*

ART. 132. In official actions judges and associate justices shall not be given a greater title than that which belongs to their actual office in the judicial career, although they may have a higher title in a different career, or on account of other titles.

Neither shall they use, while assembling in body or in chambers, any decorations which gives them right to a title higher than that which belongs to the presiding officer.

ART. 133. Judges and associate justices who have been pensioned or have voluntarily retired from the service, or because of impossibility to serve longer, shall preserve the personal title obtained in the service, and those who have been removed from office, shall lose them in the cases and in the form prescribed by this decree-law.

ART. 134. Notwithstanding the provisions of the preceding article, pensioned judges and associate justices who have been in the actual judicial service for more than twenty-five years may obtain the honors of the category next above that of their last office, if they deserve such reward, for numerous and distinguished services in the said career.

ART. 135. With the exception of the case stated in the preceding article, titles due judges and associate justices shall not be granted, nor shall those who are judges and associate justices be given a rank higher than that belonging to the office they hold.

CHAPTER VII.

DRESS OF JUDGES AND ASSOCIATE JUSTICES.

ART. 136. Municipal judges and their substitutes, when they replace the former, shall, in all the acts in which they exercise jurisdiction or convene as such, wear the insignia proper to their office.

ART. 137. Judges and associate justices during public sessions, in other official acts inside the building, and in the solemn acts in which they assemble in committee or in body, in conformity with this decree, or whenever ordered to do so by royal order, shall wear ceremonial dress.

ART. 138. Ceremonial dress shall be:

For examining and first instance judges the gown, medal, and badge which are prescribed for them by the provisions in force.

For associate justices of audiencias the prescribed gown, medal, and badge.

In the remaining official acts not mentioned in the preceding article, judges and associate justices shall use only the badge or medal and the cane, with distinctive sign which is assigned them.

ART. 139. No judge or associate justice can wear other dress or other insignia than those proper to their office in the judicial service, nor decorations higher than those worn by the presiding judge.

CHAPTER VIII.

PAY OF JUDICIAL OFFICERS.

ART. 140. Municipal judges or justices of the peace, and their substitutes, shall receive only the fees fixed by the schedules of judicial fees.

ART. 141. Judges of first instance of the entrance category, and the other officers of the same rank, shall receive 750 pesos of pay and 1,125 pesos of extra pay.

Judges of first instance of the promotion category and other officers of equal rank, 900 pesos of pay and 1,350 pesos of extra pay.

Judges of the final category and other officers of equal rank, 1,100 pesos of pay, and 1,650 pesos of extra pay.

The associate justices of criminal audiencias and other officers of the same rank, 1,400 pesos of pay and 2,100 pesos of extra pay.

The associate justices of territorial audiencias and other officers of the same rank, 1,700 pesos of pay and 2,550 of extra pay.

The associate justices of the audiencia of Habana and other officers of the same rank, 2,000 pesos of pay and 3,000 pesos of extra pay.

The presiding judge and presiding judges of chamber of the audiencia of Habana, 2,300 pesos of pay and 3,450 of extra pay.

ART. 142. The associate justices and the auxiliary and subordinate officers of audiencias, when leaving the place of residence of the same

in order to convene in a chamber of justice, shall receive the following daily allowances:

Associate justices, 6 pesos per day; secretaries, 3 pesos; court officers and doorkeepers, 1 peso. This increase of salary shall not be taken into account in the payment of pensions.

ART. 143. No substitute shall get a salary other than that of his regular office.

Offices which can not be substituted according to regulations, shall be intrusted to active officers or those suspended with pay, and private persons as temporary appointees, when such action is demanded by the requirements of the service.

In such cases, no matter whether the position which is thus occupied is the first vacancy occurring, or one caused or produced by other vacancies, the interested parties shall receive either the pay only, or both the pay and extra pay fixed in the budget for the duties intrusted to them, according as to whether the vacancy is accidental or absolute.

ART. 144. All temporary occupation of offices of royal appointment shall be submitted to the approval of the Colonial Department.

ART. 145. The time of temporary service rendered by officers suspended with pay shall be credited for their classification on the passive list, provided that their temporary employment was approved by royal order.

ART. 146. All officers in the judicial service or in that of public prosecution shall have a right to allowance for transportation expenses, in the manner and under the conditions established by the legislation in force on the subject.

TITLE IV.

TRANSFERS, SUSPENSION, RETIREMENT, REMOVAL, AND PENSIONING OF JUDICIAL OFFICERS.

CHAPTER I.

TRANSFERS.

ART. 147. Judicial officers, with the exception of those serving in Habana, must necessarily be transferred:

1. When they have resided in the same town for eight years.

2. When by the acts of another party, and not by his own, any one of the former, his wife, or his or her ascendants or descendants, or collateral relations within the fourth degree of consanguinity or second degree of affinity, acquired real estate within the territory over which the jurisdiction of the superior or inferior court to which he belongs extends.

3. If on account of any circumstance which is not the one specified in article 152 there happen to be in the same court or audiencia two persons related to each other within the fourth degree of consanguinity

or second of affinity, in which case the Government shall see that the transfer takes place within four months.

4. In the cases mentioned in article 152 the transfer shall be made, whenever possible, within one year from the date on which the suspension began.

ART. 148. Judicial officers may be transferred:

1. On account of serious disagreements with the other members of the court to which they belong.

2. When the chamber of administration of an audiencia, for well-founded reasons, recommends the transfer of judges, secretaries, and vice-secretaries, or that of the supreme court the transfer of associate justices.

3. When circumstances of some other kind, or very important considerations of public order, require such transfers.

CHAPTER II.

SUSPENSIONS.

ART. 149. Suspensions of judicial officers shall take place by a decision of the competent court in the following cases:

1. When it has been declared that there are grounds for criminal prosecution against the same for crimes committed in the exercise of their duties.

2. When for any other crime they have been sentenced to imprisonment or to an equivalent bond.

3. If, without previous imprisonment or bond, either corporeal or correctional punishment of the same has been demanded by the department of public prosecution.

4. When they have received any disciplinary punishment for serious acts which, without constituting crimes, compromise the dignity of their office and lower them in the public esteem.

5. When the suspension is decreed by way of discipline.

Presiding judges of territorial audiencias, on their own responsibility, and hearing the chamber of administration, may also suspend an examining or first-instance judge, after proceedings in which there appears a request of suspension by the Governor-General or by the hierarchical superior of the person concerned, or for any other sufficient grounds in his judgment.

The proceedings shall immediately be forwarded with his report to the Government.

In this case one of the following three decisions is possible:

1. Removal of the suspension.

2. Transfer of the person interested.

3. Decision of dismissal.

In the latter case the prescriptions of article 156 shall be observed.

ART. 150. In the first three cases of the preceding article the court having cognizance of the cause shall order the suspension in the same decree which sets forth the ruling therefor.

In the fourth case the chamber of administration of the proper audiencia shall order the suspension of judges, secretaries, and vice-secretaries; and the chamber of administration of the supreme court of associate justices. For this purpose they shall resolve themselves into chambers of justice and shall call up the facts relating to the penalties imposed.

In the fifth case the penalty shall be imposed by the court or the chamber of administration to which the cognizance of the offense that gives rise to the disciplinary penalty belongs, convening for the purpose as a chamber of justice.

In the last two cases the officer concerned shall be given a hearing either in writing or orally, if he appears on summons issued to him.

ART. 151. The suspension shall last:

In cases 1, 2, and 3 of article 149, until a sentence of acquittal has been pronounced or a suspension of proceedings has been decided upon.

In case 4, until an acquittal has been declared or refused.

In case 5, during the whole period fixed in the sentence of disciplinary penalty.

ART. 152. A disciplinary suspension of judicial officers, with the exception of those serving in Habana, until they are transferrred to other points, shall be proper in the following cases:

1. When they marry a woman born within the subdistrict (partido), district (distrito), or municipal district in which they discharge their duties, except when the birth has been declared as having taken place during the temporary residence of the mother, by the Colonial Department; or when they marry a woman who resides or owns real estate in the localities in question, or when real estate in those localities is owned by her relatives in a direct ascending or descending line, or collateral relatives to the second degree.

2. When by their own acts, or by the acts of their wives, they have acquired real property in the said territory; but not when they have acquired said property by inheritance or by the acts of a third party.

ART. 153. The suspension in the cases specified in the preceding article shall be decreed by the chamber of administration of the supreme court when associate justices are involved, and by the chambers of administration of audiencias when other judicial officers are concerned.

In both cases they shall convene for the purpose as chambers of justice, shall summon the persons interested, and, if they appear, shall give them a hearing in writing or orally.

ART. 154. In cases 1, 2, and 3 of article 149 the suspended officer shall draw one-half of his salary.

In cases 4 and 5 of the same article and in those specified in article 152 he shall not draw any salary at all.

ART. 155. When the suspended officer is acquitted in cases 1, 2, and 3 of article 149 he shall be credited the part of his salary which he may not have drawn during his suspension.

CHAPTER III.

DISMISSALS.

ART. 156. Dismissals shall be made when, in the opinion of the Government, the officer concerned takes part in political affairs other than casting his electoral vote.

In every case proceedings shall be instituted, in which shall be heard the Governor-General and the respective presiding judge and *fiscal.*

If an associate justice is involved, the chamber of administration of the supreme court shall also be heard.

The person interested shall always be given a hearing; who shall have, besides, a right to the concession of a reasonable time necessary for his defense.

Until an officer has been personally notified of his dismissal the steps taken against him shall be considered as a mere suspension.

CHAPTER IV.

RETIREMENT WITH PENSION.

ART. 157. Judicial officers who are physically or mentally incapacitated for the service shall be retired with pension.

ART. 158. The following officers may be retired with pension on their request or by the decision of the Government:

Associate justices who have reached the age of 70 years.

Other officers who have reached the age of 65.

ART. 159. When a retirement with pension is not made at the request of the person interested a hearing must be given to the said officer in the administrative proceedings instituted for the purpose, if based on the causes specified in article 157.

ART. 160. Judicial officers shall have at their retirement the pay to which they are entitled according to their years of service, in the same terms as those who draw an equal salary in the other careers of the State, adding to the same the increase of eight years which corresponds to them by virtue of the career.

ART. 161. Officers retired with pension on account of incapacity caused by injuries received in the acts of service or as a consequence of the service shall enjoy:

The full salary which they drew in active service, if they nad served for twenty years in the judicial or public prosecution careers.

Four-fifths of the said salary, no matter what may be the number of years of their service.

ART. 162. Officers who are retired with pension on account of incapacity before reaching 60 years may be reinstated and return to the service, proving that the cause for the retirement has disappeared, and after the council of State has been heard.

Reinstated officers shall continue to draw the salary belonging to them as retired officers with pension until they are given a new position.

TITLE V.

JUDICIAL LIABILITY

CHAPTER I.

CRIMINAL LIABILITY OF JUDICIAL OFFICERS.

ART. 163. Criminal liability may be required of judicial officers when they infringe laws relating to the exercise of their duties in the cases specifically provided for in the penal code, or in other special laws.

ART. 164. The trial of judicial liability against a judicial officer can only be instituted:

1. In virtue of a ruling of a competent court.
2. At the instance of the department of public prosecution.
3. At the instance of a person qualified to appear in court.

ART. 165. When the supreme court, on account of lawsuits or causes of which it takes cognizance, or by reason of the inspection or supervision which it exercises over its subordinates, or by any other means, is informed of any act of a judicial officer which may be classified as a crime, it shall order the institution of an action for its verification and proof, first hearing the department of public prosecution.

ART. 166. The provisions of the preceding article shall be extended to audiencias in case the act which may be classified as a crime comes within their jurisdiction.

If it should not come within their jurisdiction, they shall bring to the knowledge of the court of competent jurisdiction the facts, with the circumstances that may be useful in the proceedings.

ART. 167. Judicial officers shall limit themselves to informing the *fiscal* of the audiencia of the territory to which they belong of the facts and data they may have, in order that the latter may bring the proper criminal action, or cause it to be brought by another *fiscal* if the delinquent belongs to a different jurisdiction.

The above-mentioned officers shall also inform the presiding judge of the audiencia of the case, stating that they have already brought it to the knowledge of the *fiscal*.

ART. 168. The department of public prosecution may institute criminal proceedings:

1. In the execution of a royal order.
2. In virtue of its duty to promote the discovery and punishment of crimes.

ART. 169. The royal order which incites the department of public prosecution to institute proceedings shall specify the fact or facts that are to be cause of judicial actions.

ART. 170. When the royal order commands proceedings against a judicial officer it shall be forwarded to the *fiscal* of the audiencia of competent jurisdiction.

ART. 171. The *fiscal* of the supreme court, when he has knowledge of any fact which gives rise to demanding liability of any officer of

those mentioned in the preceding article, shall issue an order to prosecute the said officer, directing this order to the *fiscal* of the proper audiencia, with the instructions he may think proper, reporting this action to the colonial department.

ART. 172. The *fiscales* of the audiencias, after receiving from the supreme court the order commanding them to institute a cause against judicial officers, shall make the complaint which may be proper according to law.

Fiscales of audiencias shall also make the corresponding denunciation without requiring a command from their hierarchical superior or the Government whenever they learn of any crime committed by a judicial officer.

ART. 173. In the cases in which *fiscales* of audiencias have knowledge that any associate justice has been guilty of an offense, they shall inform the *fiscal* of the supreme court, who shall proceed to institute the action if he deems it proper.

ART. 174. The representatives of the department of public prosecution shall make to those of the audiencias to which they are assigned the same denunciation prescribed in the preceding article relating to crimes committed by judicial officers.

ART. 175. In order that an action may be instituted with the object of exacting criminal liability of judicial officers in the third case of Article 164, a preliminary procedure must first take place in accordance with the proceedings established by the law on criminal procedure, and a declaration stating that there are grounds for prosecuting the same.

This declaration does not accept their guilt.

ART. 176. The same court which in a proper case should take cognizance of the cause, shall also take cognizance of the preliminary procedure referred to in the preceding article.

CHAPTER II.

CIVIL LIABILITY OF JUDICIAL OFFICERS.

ART. 177. The civil liability of judicial officers shall be limited to the payment of the computable loss and damage which they may cause individuals, corporations, or the State, when in the discharge of their duties they violate laws through inexcusable negligence or ignorance.

ART. 178. As computable damages for the intents and purposes of the preceding article shall be understood all damages which may be appraised in currency, according to a reasonable estimate of the courts.

ART. 179. Negligence or ignorance shall be held as inexcusable, whenever there has been made, even unintentionally, a ruling manifestly contrary to law, or whenever there has been neglected any step or formality which has been ordered to be observed under the pain of nullity.

ART. 180. Civil liability may be only exacted at the instance of the party prejudiced, or his legal representatives in an ordinary action, and before the court immediately superior to that which has incurred the same.

ART. 181. An exaction of civil liability can not be made until the sentence which has been rendered in the cause or suit which is supposed to have caused damage is final.

ART. 182. An action of civil liability can not be instituted by the person who, although he could have done so, did not make objections at the proper time during the trial.

In no case shall a sentence pronounced in an action of civil liability alter a final sentence.

TITLE VI.

POWERS OF SUPERIOR AND INFERIOR COURTS.

CHAPTER I.

POWERS OF MUNICIPAL JUDGES AND JUSTICES OF THE PEACE.

ART. 183. Municipal judges and justices of the peace shall have power:

1. To take part in effecting acts of conciliation.

2. To exercise a voluntary jurisdiction in the cases for which they are expressly authorized by law.

3. To take cognizance in first instance and in oral trial of complaints which do not involve more than 200 pesos.

4. To dictate preliminary rulings in testamentary matters or intestate successions, whenever it is proper according to law, in towns where there is no court of first instance, until such court takes cognizance of the same.

By preliminary rulings for the purposes of this article shall be understood those the object of which is to place in security the property of inheritances and to provide for everything which admits of no delay.

Whenever municipal judges or justices of the peace take part in these proceedings they shall immediately report the fact to the court of first instance, to which they shall forward copies of the proceedings they may have instituted.

5. To make, in cases requiring a decision which can not be delayed without causing damage to the interested parties, provisional rulings, reporting the matter to the court of first instance and sending the data at the same time.

6. To carry out the auxiliary commissions which are intrusted to them by judges of first instance or by audiencias.

7. To take cognizance of the other actions that are intrusted to them by law.

ART. 184. In penal matters municipal judges or justices of the peace shall have the power:

1. To take cognizance of offenses in first instance.

2. To take a preventive preliminary action in criminal causes.

3. To carry out the auxiliary commissions intrusted to them by examining judges, judges of first instance, or by audiencias.

CHAPTER II.

POWERS OF EXAMINING AND FIRST INSTANCE JUDGES.

ART. 185. Examining and first instance judges shall have the power:

In civil matters, to discharge the duties which are expressly assigned to them by law and the commissions with which they are intrusted by audiencias for carrying on certain proceedings.

In criminal matters, to make the preliminary examinations in the causes and to institute the other proceedings referred to them by audiencias.

In civil and criminal matters, to discharge the auxiliary commissions addressed to them by other judges or courts through the proper audiencia.

CHAPTER III.

POWERS OF AUDIENCIAS.

ART. 186. The civil chambers of audiencias shall have the power:

1. To decide questions of competency raised in civil matters between municipal judges or justices of the peace of their districts belonging to different subdistricts.

2. To decide questions of competency in civil matters between judges of first instance of their district.

3. To take cognizance of recourses of coercion in civil matters raised against ecclesiastical judges, either subordinate or chief (subroganeos ó metropolitanos).

4. To take cognizance on appeal for review only (única instancia) of interlocutory issues (incidentes) in civil matters when they relate to challenges of their associate justices.

5. To take cognizance in first instance of actions exacting civil liability instituted against municipal judges, or justices of the peace, and judges of first instance.

6. To take cognizance in second instance—

Of civil causes and matters which were in first instance taken cognizance of by judges of first instance of their territory.

Of interlocutory issues in challenges of judges of first instance.

7. To aid in the administration of justice in civil matters whenever such aid is demanded of them by other judges or courts.

ART. 187. Besides the incidental issues, the cognizance of which the law on criminal procedure assigns to the competency of criminal chambers and audiencias and to territorial audiencias, they shall also take cognizance:

Criminal chambers and audiencias, of all the causes for crimes committed within their respective province or limits and belonging to the

ordinary jurisdiction, with the exception of those which are at the time being taken cognizance of by the supreme court, and with the other exceptions prescribed in this decree-law or in special laws.

Criminal chambers of territorial audiencias of causes referring to crimes committed in the exercise of their functions, within their respective territory:

1. By provincial deputies.

2. By members of municipal councils in the capitals of provinces and towns where there is an audiencia.

3. By administrative authorities of the said towns, with the exception of the civil and military governors.

Territorial audiencias *in banc* shall take cognizance of causes in all classes of crimes committed by auxiliary officers of the department of public prosecution of the criminal audiencias.

TITLE VII.

AUXILIARY OFFICERS OF SUPERIOR AND INFERIOR COURTS.

ART. 188. Under the denomination of auxiliary officers of superior and inferior courts there shall be understood:

Judicial secretaries.

Judicial archivists.

Officers of chambers.

Recording clerks (*escribanos de actuaciones*).

Clerks attending as witnesses (*actuarios testigos de asistencia*).

CHAPTER I.

JUDICIAL SECRETARIES.

ART. 189. There shall be secretaries:

Of municipal courts or courts of justices of the peace.

Of examining courts.

Of chambers of justice of the territorial audiencias.

Of administration of the territorial audiencias.

There shall also be secretaries and vice-secretaries of the criminal audiencias.

SECTION 1.—*Conditions common to judicial secretaries.*

ART. 190. In order to be a secretary of whatsoever class or denomination it shall be necessary:

1. To possess the qualifications required by article 73 of this decree law for the offices of judges and associate justices.

2. Not to be included in any of the cases of incapacity specified for the same in article 50.

3. Not to accept any of the offices or employments which are incompatible with judicial functions according to article 75.

From this provision are excepted the secretaries of municipal judges or justices of the peace, in the cases specified in this decree-law.

ART. 191. Persons who have anything to do with proposing and appointing judicial secretaries shall take care to ascertain whether the candidates possess the qualifications required by this decree-law, or whether for any cause whatsoever they are incapacitated to accept the position to be filled.

ART. 192. In cases of offices to be filled by competitive examinations the provisions of the foregoing article must be fulfilled before the examinations begin, only those persons being admitted to the same who are not legally disqualified.

Those who have obtained incompatible employments or offices shall be admitted to the examinations, if they declare that in case they obtain the position they seek they will renounce the one which is incompatible with the same.

ART. 193. Holding offices of secretaries of inferior or superior courts shall be a justifiable cause for being exempted from the obligatory offices mentioned in No. 3, of article 190, the express provisions of articles 76 and 77 of this decree law with respect to judges and associate justices being also applicable to judicial secretaries.

ART. 194. Judicial secretaries, before taking possession of their offices, shall take an oath to observe the constitution of the State, to be faithful to the King, and to diligently comply with the laws referring to the exercise of their office.

This oath shall be taken:

By the secretaries of municipal courts or of courts of justices of the peace and examining courts, before the judge whom they are to assist.

By the secretaries of chambers of justice of territorial audiencias, and by the secretaries and vice-secretaries of criminal audiencias, before the chamber of audiencia in which they are to discharge their duties.

By the secretaries of administration of territorial audiencias, before the chamber of administration of the respective audiencia.

ART. 195. The respective judges or chambers shall install the secretaries into their offices immediately after they have been sworn in.

ART. 196. It shall be the duty of the secretaries of municipal or courts of justices of the peace, examining courts, and chambers of justice of audiencias, as well as of recording clerks (*escribanos de actuaciones*), and of clerks attending as witnesses (*actuarios testigos de asistencia*):

1. To aid judges, chambers, and courts, according to their respective duties, in all that refers to the exercise of voluntary or litigated jurisdiction in civil and criminal matters.

2. To keep secret all matters and cases they may have charge of which require it.

3. To make notes in documents of the days and hours in cases in which the terms are fatal (fatales), when the papers are presented to them, giving a receipt therefor.

4. To make notes, in a similar manner, of the days on which parties

take and return documents, and dates on which they present papers without returning the same.

5. To give a timely account of all the claims which are presented to them in matters in which they take part during the day's session, or at least that of the preceding day, being responsible for unjustifiable delays incurred by them.

6. To draw up correctly and to certify with their names proceedings, rulings, documents, and sentences which pass through their hands.

7. To keep in their custody and to preserve with the greatest care the proceedings of trials and the documents that are in their charge.

8. Not to give any certified copies or certificates except by virtue of a ruling of the superior or inferior court.

9. To always keep up to date the books provided for in the regulations.

10. To be impartial to all who have business pending in their offices.

11. To fulfill all the other obligations imposed upon them by law and by the provisions of the regulations.

ART. 197. Secretaries of examining courts and those of chambers of justice of audiencias, as well as recording clerks (*escribanos de actuaciones*), besides the obligations prescribed in the preceding article, shall have the following:

1. To give oral accounts when rulings on procedure are in question which do not require complicated precedents for their solution.

2. To give a written account, with the greatest precision possible, when rulings on procedure are in question which require written accounts by reason of their importance, the volume of precedents, or the difficulties which they present for their solution.

3. To draw up the judicial reports for the consideration of the actions and causes, when considered both for interlocutory and for definitive decisions.

4. To show in the judicial reports whether the documents are in good state for deciding the article, action, or cause, or whether there is some serious defect which must be corrected, as its omission might be a cause for nullity.

5. To show, in cases of appeals, whether the decisions of first instance, and, in cases of cassation, whether those of second instance were pronounced within the period provided for by law.

6. To put on the margin of rulings the surnames of the judges and associate justices who may have attended and the names and surnames of the same on the margins of documents and decisions.

7. To incorporate in the minutes of considerations the days of their duration, the number of hours employed each day, and the names and surnames of the defendants who attended them.

8. To see that there is no ruling left without being rubricated by the presiding judge of chamber, nor any document or decision without that of those who take part in making them.

9. To draw up and countersign royal writs, letters, or dispatches after they have been signed by the presiding judge of the court and the associate justices whose duty it is to do so.

10. To regulate costs according to the schedule of fees and bills of lawyers in cases in which a party has been required to pay them.

11. To fulfill the other obligations imposed upon them by laws and the provisions of the regulations.

ART. 198. Judicial secretaries shall reside in the town in which they perform their duties. They can not absent themselves without leave granted them by the judge or the presiding judge of the respective court.

Those who absent themselves without leave shall suffer a disciplinary correction; and if they are absent for three months or more, or if they do not appear upon being summoned, they shall lose their office.

ART. 199. The regulations shall specify:

1. The days and hours on which offices of secretaries and clerks shall be open, which shall appear on a placard posted on the outside of their offices.

2. The number of books that shall be kept by secretaries and clerks, and conditions regulating them.

3. The manner and time fixed for making inventories of the books and papers.

4. The method of distribution of business among secretaries and clerks of the same inferior or superior court.

ART. 200. Judicial secretaries shall be transferred, suspended, or discharged from their career, or retired, for any of the causes specified in Title IV of this decree-law.

ART. 201. When, because of extraordinary or unforeseen circumstances, the number of secretaries necessary for the administration of justice and for the transaction of administration business is lacking, the judge or the presiding judge of the court shall appoint one or more if they are necessary, giving immediately to the Government an account of the causes which rendered said appointment indispensable, which shall be only of a temporary character.

ART. 202. Secretaries of courts of examination in considering actions and causes and in all solemn acts shall wear black clothes.

Secretaries of audiencias shall always use a lawyer's gown without any other distinctive mark.

SECTION 2.—*Secretaries of municipal courts or of courts of justices of the peace.*

ART. 203. In each municipal court there shall be a secretary, who shall certify all its acts, and a substitute for cases of vacancy, sickness, absence, incompatibility, challenge, or any other impediment of the secretary.

ART. 204. For employment as secretaries of municipal courts or courts of justices of the peace, preference shall be given to those who

have some legal knowledge acquired in professional studies or in the transaction of judicial business.

ART. 205. The secretaries of municipal courts or of courts of justices of the peace, and their substitutes, shall be appointed by judges of first instance from among three persons proposed by the municipal judges.

Their emoluments shall consist of the fees fixed by the schedules of judicial fees.

ART. 206. The office of judicial secretary, and of his substitute, of municipal courts shall be compatible with any public employments or offices the duties of which may be conciliated with it in towns, the population of which does not reach 500 inhabitants.

In those where the population exceeds this number such offices shall be incompatible with any employment, office, or commission paid by the Government, by the province, or by the towns.

SECTION 3.—*Secretaries of courts of examination.*

ART. 207. There shall be eight positions of judicial secretaries for criminal affairs in Habana, and two in San Juan de Puerto Rico, two secretaries being assigned to each court of examination.

These officers shall have the rank and draw the salary of judges of first instance of the entrance category.

The costs which, were they not salaried, they would receive according to the schedule of fees, shall be turned into the public treasury, on the proper paper for payments to the State, as fast as they are collected.

ART. 208. Secretaries of courts of examination shall replace each other in cases of vacancies, sickness, absence, incompatibility, challenges, or any other legitimate impediment.

ART. 209. The clerks employed in courts of first instance shall discharge the duties of secretaries of examination, and vacancies shall continue to be filled according to the regulations in force.

SECTION 4.—*Secretaries of territorial audiencias.*

ART. 210. There shall be in each audiencia one secretary of administration acting as secretary of the court *in banc*, of the chamber of administration, and of the presiding judge's office.

ART. 211. Secretaries of administration shall be engaged exclusively in the administrative matters of audiencias, without taking part directly or indirectly in matters of a litigative character, except in directing them in a proper way in their relations with the presiding judge's office.

ART. 212. Secretaries of administration shall furthermore be obliged:

1. To preserve the seal of the court.

2. To seal and register royal writs, letters, and dispatches which the court orders to be issued to the parties concerned or officially.

3. To keep an exact register in which the documents mentioned in the preceding article shall be copied literally, and not to give any copy

of said documents without a written order from the court or from one of its chambers.

4. To take charge of the archives of the court in the character and capacity of keeper of archives, with the powers and liabilities of that office in courts where there is no special keeper of archives.

5. To take charge of the library in the courts in which there is no keeper of archives.

ART. 213. The Government may create the office of vice-secretary of administration in any audiencia whenever the accumulation of business renders such course necessary or advisable.

ART. 214. It shall be the duty of vice-secretaries to replace secretaries in cases of vacancies, absence, sickness, or any legal impediment occurring in particular cases, and to assist them in all that refers to the discharge of their duties, in accordance with the distribution of the business of the secretary's office.

ART. 215. Vice-secretaries, officials of the secretary's office, and clerks paid out of the budget, and those of either class who are paid from the appropriation for material, shall be under the direct orders of the secretaries and presiding judges.

ART. 216. The officers and clerks of a secretary's office, paid out of the budget, shall be subject in their appointment and qualifications to the general rules fixed for public employees under the same conditions.

Those who draw their pay from the appropriation for material, as assigned to them by the internal regulations of the secretary's office, may be freely appointed, suspended, or discharged by the presiding judge of the respective court.

SECTION 5.—*Secretaries and vice-secretaries of criminal audiencias.*

ART. 217. In each criminal audiencia there shall be a secretary and a vice-secretary, whenever the needs of the service require it.

ART. 218. The vice-secretaries shall perform the duties of the secretaries when they are assigned to a particular chamber or section, and when they do not attend the latter, besides substituting them in cases of vacancies or impediments.

The fees fixed in the schedules for secretaries and vice-secretaries shall be collected in paper and turned into the treasury.

ART. 219. The presiding judges of courts shall appoint lawyers as substitute secretaries to replace regular secretaries in cases of vacancies or impediments.

Lawyers acting as substitutes shall have the same privileges as are granted to substitutes of the department of public prosecution.

In case of urgent necessity, courts in substituting secretaries may avail themselves of the services of officers of chamber who are lawyers, or who are qualified to perform the duties of notaries, or of the services of any secretary of an inferior court.

CHAPTER II.

ARCHIVISTS.

ART. 220. In such audiencias in which the office of keeper of archives is considered by the Government to be necessary or convenient on account of the importance and extension of their archives, there shall be an archivist with the subordinate employees necessary for the custody, preservation, and classification of documents.

ART. 221. Archivists shall be proposed in ternary by the chamber of administration of the respective audiencia, and shall be appointed by the colonial department.

ART. 222. Court archivists shall have notarial authority in certificates which they may issue relating to records on file in their archives. They can not issue them except by virtue of a judicial ruling or by order of the presiding judge of the court.

ART. 223. In courts which have a library it shall be under the care of the archivists.

ART. 224. The employees of judicial archives of courts shall be under the direct orders of the archivists and the latter under those of the presiding judge of the court.

ART. 225. The archivists and the employees of archives shall have a fixed salary. The fees for the certifications they may issue shall be collected in paper and turned into the treasury.

CHAPTER III.

OFFICERS OF CHAMBER.

ART. 226. In every audiencia there shall be officers of chamber.

ART. 227. It shall be the duty of officers of chamber to issue summons, citations, and notifications, attachments, collection of decrees, and other duties which should not take place in the presence of the court, and which are peculiar to the court to which said officers belong.

To assist the presiding judge of the court and the presiding judges of chambers, under whose orders they are, to carry out those relating to the judicial service which may be given them.

To attend court rooms whenever the presiding judge of the chamber to which they belong orders them to attend on account of special circumstances, taking care that persons attending the court preserve order and decorum.

ART. 228. Officers of chamber shall be appointed by the Government on the recommendation of the respective courts.

ART. 229. In order to become an officer of chamber, a candidate must be a lawyer, or have completed and qualified himself in studies required for offices of public certification, or possess a knowledge of judicial practice relating to the office he is to fill. The latter qualification shall be proven by examination before a board composed of three secretaries of chamber appointed by the presiding judge of the respective court.

If there should not be this number, it shall be completed by attorneys practicing in the locality.

ART. 230. Officers of chamber shall be sworn in at a public session before the proper court.

ART. 231. The formula of the oath of office taken by officers of chamber shall consist of the pledges to be faithful to the King, to observe the constitution and laws, and to satisfactorily perform the duties of their offices.

ART. 232. Officers of chamber shall be paid the salaries provided for them in the budget. The fees that are assigned them in the schedule of fees shall be collected in paper and turned into the treasury.

ART. 233. Officers of chamber shall not leave the capital except in cases when chambers of audiencia or extraordinary chambers are convened outside thereof, and always by a special ruling of the presiding judge of the audiencia.

ART. 234. Suspension and discharge of officers of chamber and secretaries of municipal or courts of justices of the peace may be decided upon by the presiding judge of the audiencia or the judge of first instance of the subdistrict, respectively, subject to the provisions of Chapters II and III of Title IV of this decree-law.

Presiding judges of audiencias shall report to the colonial department of the use they may have made of this power, in order to arrive at the final decision which may be proper.

CHAPTER IV.

Section 1.—*Recording clerks (escribanos de actuaciones) of Cuba and Puerto Rico.*

ART. 235. Every court of first instance of the final category of the island of Cuba shall have at least six recording clerkships (*escribanías de actuaciones*), three of the promotion and two of the entrance category, without prejudice to increasing said number after proceedings, in which the necessity of new appointments is demonstrated by a judge or by the respective chamber of administration.

In Puerto Rico the number of clerkships in each court of first instance of the final category shall be three, and in those of the promotion or entrance category there shall be two at least.

ART. 236. The present clerkships shall be retained, although they exceed the number fixed in the foregoing provisions; but vacancies hereafter occurring shall not be filled until the prescribed number remains.

Matters of legal procedure pending in a clerk's office or offices that shall hereafter become vacant shall be turned over, after an inventory is made, to the general distribution of civil affairs, the archives remaining in the office of the secretary of administration of the inferior court to which they belong.

ART. 237. In towns having several inferior courts, whenever any of the same has a number of clerks exceeding by more than one the num-

ber existing in the other inferior courts of the same place, the chamber of administration of the audiencia shall transfer the clerk last appointed from the court with the greatest number of clerks, to the court with the smallest number. The transferred clerk shall continue to perform his duties relating to the matters which have been apportioned to him before the transfer and which are in course of procedure.

The presiding judge of the audiencia shall make a report of these transfers to the general direction of grace and justice of the colonial department.

ART. 238. The recording clerks' offices of courts of first instance of said islands shall be filled by competition on the recommendation in ternary made by the chambers of administration of the proper territorial audiencias.

ART. 239. When a vacancy occurs in an office of recording clerk the proper judge of the subdistrict shall state to the chamber of administration of the audiencia of the territory whether he considers filling the vacancy in question as necessary or not.

In the former case, when the vacancy exceeds the number fixed in article 1, he shall state to the chamber of administration the grounds on which his opinion is based, reporting the number of clerks on duty at the court and attaching a statement of the judicial business, civil, criminal, as well as administrative, of which he took cognizance during the last two years. In view of this data the chamber of administration shall submit the proceedings with its report to the colonial department in order that the latter may decide whether the vacancy should be filled or not.

ART. 240. When it is thought necessary to fill an office of recording clerk the decision shall be communicated to the presiding judge of the proper audiencia in order that the latter may advertise the competition in the official newspapers of the island to which belongs the court in which the vacancy exists, to enable those desiring to obtain the position to present within the period of thirty days, counting from the publication of the advertisement, their petitions in writing to the judge of first instance of the subdistrict.

ART. 241. If the vacancy does not exceed the number fixed in article 235 for each inferior court, the presiding judge of the audiencia shall publish at once an advertisement for the competition in the same manner as determined in the foregoing article.

ART. 242. In order to be a recording clerk the following qualifications are required:

1. To be a Spaniard and a layman.
2. To be over twenty-five years of age.
3. To be of good moral character.
4. To be a lawyer or to have passed the course required for the notarial career and to have obtained the proper certificate of fitness to

issue certifications for a notarial office, or to have served temporarily as recording clerk for the period of two years.

ART. 243. Those who do not possess the qualifications mentioned in No. 4 of the foregoing article may also aspire to the office of a recording clerk, but candidates of this class shall be appointed only when candidates possessing the same are wanting, and shall fill the office only until the time when the position is sought for by a person who possesses said qualifications, or until the vacancy is announced again, if such course is thought to be advisable.

ART. 244. The following persons can not be appointed recording clerks:

1. Bankrupts or insolvents who have not secured their discharge.
2. Debtors to the State or to public funds, as taxpayers, or for balance of account.
3. Persons under criminal prosecution during the period thereof.
4. Persons sentenced to corporeal punishment until they obtain rehabilitation.

ART. 245. The office of recording clerk shall be incompatible with the office of a deputy to the Cortes, provincial deputy, municipal judge or justice of the peace, or assessor of the same when acting as judge of first instance, alcalde or member of a municipal council, practicing law and with any office or employment which confers additional jurisdiction or is paid from the funds of the State, province, or municipality, or which obliges them to live away from their domicile.

ART. 246. When the period referred to in articles 239 and 240 has elapsed, judges of first instance shall forward to the presiding judge of the proper territorial audiencia the petitions and documents presented by the candidates, making a report on each one of the same.

ART. 247. The chamber of administration, in view of the petitions and documents received, and after procuring the data it may consider necessary with regard to the morality, conduct, and diligence of the candidates, and taking also into account the services which they may have rendered in the administration of justice, shall submit to the colonial department a recommendation in ternary for the position to be filled, accompanying therewith the personal records of the persons proposed and an extract of the records of the other candidates.

ART. 248. In making the recommendation the chambers of administration shall give preference in the first place to those who are lawyers, and, if these are wanting, to those who have passed and qualified themselves in courses for the offices of notaries and who have the proper diploma. From among several candidates who served as recording clerks the preference shall be given to the one who performed the duties of a clerk for the longest time in an inferior court of the highest category.

ART. 249. The appointment of recording clerks shall be made by the colonial department and must be given to one of the persons recommended.

ART. 250. The clerk elect shall take possession of his office within the period of sixty days without prejudice to reducing said period if the convenience of the service demands such action, or to grant to appointees the extensions they may ask, which may be conceded if the convenience of the service permits of it, the presentation of the credentials given the appointee being sufficient for taking possession of office after the orders of appointment have been communicated. The appointee who does not present himself to take possession within the designated period, shall be considered as renouncing the office unless he gives adequate written proofs of his impossibility to do so, in which case he shall be granted the extension which may be considered sufficient.

ART. 251. If an appointment becomes null on account of the failure of the appointee to appear to take possession of the office, the colonial department shall make another appointment from among the candidates included in the ternary, without the necessity of new proceedings.

ART. 252. Recording clerks elect, before taking possession of their offices, shall take before the proper judges an oath of allegiance to the king and to fulfill all the obligations imposed on them by law.

The oath of office having once been taken, a new oath for the office of recording clerk shall not be required.

An appointee shall be given a certificate viséd by the judge, stating that he has been sworn in and has taken possession of office, and the judge shall communicate this fact to the presiding judge of the audiencia, who shall report the same to the general direction of grace and justice of the colonial department.

Discharges shall be effected in the same manner, the cause being specified.

ART. 253. Recording clerks shall substitute each other in cases of vacancies, sickness, absence, incompatibility, challenge, or other legitimate impediment. In every court there shall be kept a list of successors for these substitutions.

ART. 254. Recording clerks shall not draw any other pay than that which corresponds to them according to the schedules of judicial fees.

ART. 255. Recording clerks may be discharged in the following cases after proceedings, and after hearing the parties concerned:

1. When they are included in any of the cases of incapacity established in article 243, or any incompatibility of those specified in article 244.

2. When they have undergone a disciplinary punishment for serious acts, which, without being crimes, compromise the dignity of their office or lower them in the public esteem.

3. When they are declared civilly liable.

4. When, on account of their vicious conduct, their dishonorable bearing, or habitual negligence, they do not deserve to continue to fill their offices.

ART. 256. The presiding judge of the proper audiencia, if he thinks

it proper, and in view of the reports and data he obtains concerning the correctness of the alleged facts, may grant recording clerks a leave of four months. If the leave is solicited in order to leave the island, or for a greater period, it may be granted only by the colonial department, or advanced by the Governor-General in case of urgency and with the requisites prescribed for leaves of officers of the administration of justice.

The Governor-General and the presiding judge of an audiencia, in a proper case, shall report to the colonial department or to the general direction of grace and justice of the same, the leaves which they advance or grant, specifying the reasons for the same, as well as of the leaves which they refuse; also stating the causes for their refusal.

ART. 257. Notaries who are at the same time recording clerks, as they fill one of the alienated public certification offices, shall continue in the same under the rules established in this decree, preserving the power to renounce the judicial office in favor of the State.

ART. 258. Recording clerks who are at the present time filling these offices in the character of temporary officers, shall also continue to perform them in the same character, being strictly subject to the provisions of this decree-law.

ART. 259. In the procedure of filling offices of recording clerks which may be in progress in inferior courts or in audiencias at the time of the publication of this decree-law, the provisions of the same shall be observed, and said proceedings shall be submitted at the proper time to the colonial department with the proper recommendation in ternary.

ART. 260. Recording clerks shall use as a distinctive mark in the acts of their profession a silver medal smaller than that used by judges, suspended from a black string with a black pin with a silver thread, showing on the obverse the attributes of Justice and on the reverse the inscription, "Fe pública judicial."

ART. 261. Recording clerks shall have the power to recommend to the chamber of administration of the proper territorial audiencia through the same inferior court in which they serve, and after demonstrating to the said court the necessity of the appointment, a person to assist them in performing their duties, and who must possess all the qualifications required by this decree-law for the performance of said duties by the incumbent.

Said auxiliary officers shall be appointed by the chamber of administration, if their ability is considered sufficient and the appointment is necessary to assist the recording clerk, under the guaranty and liability of the latter, the remuneration for this service being charged to the recording clerk, who shall have the power to discharge his assistants freely and recommend others both in case of discharge or resignation as well as in case of death.

The presiding judges of territorial audiencias shall report to the general direction of grace and justice of the colonial department the appointments and discharges of assistants to recording clerks.

SECTION 2.—*Recording clerks in the Philippines.*

ART. 262. Notaries who at the present time discharge both duties in the capacity of regular incumbents filling offices alienated by means of the proper diploma shall continue filling the office of recording clerks in the places assigned for their offices by their respective diplomas, as long as the vacancies are not effected in a natural or legal way, or as long as their resignation from the judicial office is not accepted.

ART. 263. Notaries appointed in accordance with the law of February 15, 1889, or the decree of Septemper 16, 1874, may be authorized by audiencias, reporting on the matter to the government according to temporary provison number 5 of that law, to serve in commission and provisionally as recording clerks of courts of first instance where their notarial office is situated and wherever necessity demands it.

ART. 264. Notaries, who in accordance with the provisions of the foregoing article have obtained said authorization, shall be relieved from said clerks' offices whenever in the judgment of the chambers of administration of the respective audiencias they can be replaced by persons who have completed the course for the notarial profession at the University of Manila, or at any other university of the Kingdom, and possess the first three conditions of article 242.

If there be no such persons, they may be replaced by those possessing the qualification stated in number 4 of the said article, and if there should also be none such, by the persons possessing those of article 243.

ART. 265. These appointments shall be made by the presiding judge of the respective audiencias and shall be called temporary clerks, and taking into consideration the needs of each inferior court and after fixing the number of clerks for each one of them, he shall make a report to the colonial department.

ART. 266. Where there are no regular incumbents of alienated offices or notaries public, and neither is it possible to make the temporary appointments referred to in the foregoing article, they shall be replaced in the exercise of the judicial office by those attending as witnesses in conformity with the laws and provisions in force at the present time.

ART. 267. Concerning the organization and administration of recording clerks, offices, the personnel of the Philippines shall be subject to the provisions of the corresponding articles of the foregoing section.

CHAPTER V.

CLERKS ATTENDING AS WITNESSES.

ART. 268. In the Philippine Islands justices of the peace and petty governors (gobernadorcillos), in a proper case, shall perform their duties in the presence of one attending witness, who must be of age, in the enjoyment of his civil rights, and be able to read and write Spanish.

ART. 269. Attending witnesses shall perform the duties of recording clerks of courts of justices of the peace, subject to the prescriptions of the law on civil procedure, and shall be appointed by the said judges

and petty governors, who may appoint a different person for each affair of which they take cognizance.

ART. 270. Clerks attending as witnesses shall receive the fees fixed in the schedule of judicial fees, which is now or may hereafter be in force.

TITLE VIII.

SUBORDINATE OFFICERS OF INFERIOR AND SUPERIOR COURTS.

FIRST AND LAST CHAPTER.

ART. 271. Under the name of subordinate officers of superior and inferior courts there shall be understood janitors, constables, messengers, and office attendants.

ART. 272. In each municipal court or court of justices of the peace there shall be at least one subordinate officer called a constable (alguacil); he shall discharge the various duties which are to be performed by subordinate officers according to the provisions of this decree-law.

ART. 273. In municipal courts or courts of justices of the peace in which more than one subordinate officer is required, the judge shall recommend to the proper judge of first instance the number and class of those that should be appointed; and the latter shall send the recommendation with his report to the presiding judge of the audiencia, who shall decide what he may consider proper.

ART. 274. The Government shall designate the number and class of subordinate officers to be employed:

By courts of examination and of first instance in view of the recommendation made by the judges and the reports of the chambers of administration of audiencias.

By audiencias, in view of the information given by the respective chambers of administration.

ART. 275. To be a subordinate officer of an inferior or a superior court, it is necessary to be a Spaniard, over twenty-five years of age; to know how to read and write; to observe good conduct, and not to have suffered any corporeal or correctional punishments.

A third part of the subordinate offices of each class in courts of examination and first instance, in audiencias, shall be filled by persons discharged from the army or navy, with a good record in the service.

ART. 276. Examining judges, judges of first instance, and presiding judges of superior courts shall appoint the subordinate officers of their respective superior and inferior courts.

ART. 277. Whenever a person is appointed as a subordinate officer who does not possess the qualifications specified in article 275, his appointment shall be declared void by the officer who may have made the same.

ART. 278. If the officer who appointed a subordinate officer without the necessary qualifications does not declare the appointment void, it shall be so decreed:

By the judge of first instance, in the case of subordinate officers of municipal courts.

By presiding judges of audiencias, in the case of subordinate officers of examining and first-instance courts.

By the presiding judge of the supreme court, in the cases of subordinate officers of audiencias.

ART. 279. The janitors and constables shall fulfill all the obligations imposed upon them by the laws and regulations; they shall obey the orders they may receive from judges and presiding judges of the courts and chambers to which they belong; they shall guard the chamber, assist secretaries of administration and of justice, and officers of chamber in the transaction of the judicial business, and in the duties which they must perform in carrying out the orders of superior courts, and they can not excuse themselves from obeying them, without prejudice to their making complaint to their respective hierarchical superiors of any offenses against them.

ART. 280. The messengers and office attendants shall have charge of the mechanical work designated by the internal regulations of inferior and superior courts, and shall carry out the orders ot their superiors.

Judges and presiding judges of superior courts may appoint them to perform the duties of janitors and constables.

ART. 281. The subordinate officers of audiencias shall leave the capital only by express orders of the presiding judge, in the cases when chambers of audiencia convene away from the same.

ART. 282. Judges and presiding judges of superior courts shall establish the regulations for the service of subordinate officers in the manner they may consider most advisable.

ART. 283. The subordinate officers of inferior and superior courts may be suspended and discharged freely by the officers who have the power of appointing them.

There shall be no appeal from the decision of these officers.

ART. 284. The subordinate officers of municipal courts shall not receive any other remuneration than that fixed in the schedules of judicial fees.

ART. 285. The Government, after hearing the examining or first-instance judges, and the chambers of administration of audiencias, shall fix the amount which may be necessary to pay or complete the salaries of the subordinate officers of inferior and superior courts, when the remuneration assigned to them by law in the schedules of judicial fees is not sufficient.

ART. 286. Subordinate officers shall replace each other in case the number of these officers is insufficient for a good service, the provisions prescribed in this decree-law for judicial secretaries being observed.

ART. 287. Subordinate officers of audiencias, while in service within the court or when they assist with the latter in public business, shall wear the uniform prescribed for them.

TITLE IX.

GOVERNMENT AND ADMINISTRATION OF SUPERIOR COURTS.

CHAPTER I.

PRESIDING JUDGES OF TERRITORIAL AUDIENCIAS.

ART. 288. The government of audiencias shall be in charge of their presiding judges.

ART. 289. Presiding judges of audiencias, besides the powers and obligations which are ascribed to them in other articles of this decree law, shall have the following ones:

1. To observe and cause to be observed this decree-law and all other provisions which refer, respectively, to the duties they discharge.

2. To cause due order to be observed in courts by associate justices, auxiliary and subordinate officers.

3. To recommend to the Government whatever they may consider necessary or advisable, in order to make the administration of justice more complete.

4. To receive and send out the official correspondence.

5. To pass, with their reports, petitions, complaints, and consultations which the superior court *in banc*, the chambers, and the associate justices of the court, its auxiliary or subordinate officers, submit to the colonial department, in conformity with the provisions of this decree-law.

6. To convene and preside over the court *in banc* and over the chamber of administration.

7. To receive excuses for nonattendance of associate justices, auxiliary and subordinate officers, and to report said excuses to the proper presiding judge of the chamber.

8. To name the associate justices necessary to make up the requisite number for a given matter whenever the members of one chamber are not sufficient with those of another chamber, observing the greatest equality in this service.

9. To order on all working days, at the hour assigned for holding sessions, that the court resolve itself into chambers of justice.

10. To preside, whenever they deem it proper, over any chamber of justice without prejudice to doing so in the cases expressly ordered by law. In the court rooms, while presiding, they have the right to speak, while no other person can do so without their permission.

11. To take care that all the associate justices, auxiliary and subordinate officers strictly carry out their duties to communicate to them the orders which they may deem proper relative to the performance of their duties, and to privately admonish those who show little diligence in complying therewith.

12. To call the *fiscal* to make such observations as they deem proper for the better administration of justice, relating to him and to his subordinates, without communicating directly with the latter, or restricting the liberty of action which is due the department of public prosecution.

Whenever they consider such action necessary, they may direct themselves to the Government, making such remarks relating to the department of public prosecution as they think proper.

13. To bring to the knowledge of the proper authorities offenses of associate justices which give rise to disciplinary punishments, and to the knowledge of the competent court the crimes they may commit in the exercise of their duties.

14. To report to the Government the vacancies that occur, the entering and leaving the office by associate justices, judges, and auxiliary officers of the territory of the court, when they are appointed, promoted, transferred, retired, or discharged, or while on leave of absence.

15. To hear complaints referring to the administration of justice, brought before them by the parties concerned in causes or lawsuits on account of delay of business; to adopt the measures lying within their power, and to report the same to the respective chamber whenever the importance of the matter requires such action.

16. To appoint, besides the subordinate officers whom they have a right to appoint according to this decree-law, the employees of the secretary's office whose salaries are paid from the appropriation for material; to give them leaves of absence, and to discharge them at will.

17. To adopt the measures that are necessary or advisable to keep in good order and preservation the archives and libraries of superior courts.

18. To notify the persons who are to replace them whenever they themselves can not attend.

ART. 290. Presiding judges of audiencias shall, besides, have the power to demand, personally, directly of the judges of first instance and examination and the municipal judges of their district, the lawsuits, causes, or proceedings that have been finished or carried to full execution, whenever the matter concerns the administration of justice or the State, returning them to the superior or inferior court from which said proceedings were taken as soon as the examination which was the cause of their demand has been made.

They may also order, after consulting the board of administration, visits of inspection for the purpose of examining the state of the administration of justice in any particular superior or inferior court, whenever there are good grounds for doing so, after hearing the administrative board.

ART. 291. After presiding judges have ordered superior courts to resolve themselves into chambers of justice, they shall dispatch the correspondence and other business of their office, authorizing with their signatures the communications that should not be directed with the signature of the secretary only.

ART. 292. When the transaction of the affairs mentioned in the foregoing article has been completed, the presiding judge shall give a hearing to the interested parties who desire to make a complaint, proceeding, as is proper, in accordance with No. 15 of article 289.

ART. 293. No judge, associate justice, chamber, or superior court can submit directly to the colonial department requests referring to their office or to the affairs of the court to which they belong, except through the hierarchical superiors specified below:

Municipal judges or justices of the peace, examining or first instance judges, through the presiding judges of the respective territorial audiencias.

Associate justices of audiencias and their chambers, and audiencias *in banc* through the presiding judges of the same.

Presiding judges, in passing on the requests in question, shall state whatever they deem expedient concerning the same.

ART. 294. From the provisions of the preceding article there shall be excepted the statements directed to the Government in complaint against any of the hierarchical superiors mentioned in the said article, in which case this requirement and all that refers thereto shall be omitted.

ART. 295. In cases of vacancies of the office of the presiding judge of an audiencia, and in cases of sickness, absence, or any other just impediment, the duties of this office shall be performed by the presiding judge of chamber of greatest seniority, without prejudice to the latter continuing to preside over his own chamber whenever the duties of presiding in the court permit it.

CHAPTER II.

PRESIDING JUDGES OF CHAMBERS OF AUDIENCIAS.

ART. 296. Presiding judges of chamber shall have the obligation to observe and cause to be observed the laws referring to the office they fill; to preside over chambers to which they belong; to have the right of speech, no other person being allowed to have it without their permission; to take care that due order is preserved in their chambers, and to bring to the knowledge of the presiding judge whatever they deem advisable for making the administration of justice more effective, and the offenses of the associate justices when they think that said offenses call for a punishment not included within the limit of their powers.

ART. 297. In cases of vacancies, absence, sickness, or any other legitimate impediment of a presiding judge of a chamber, he shall be replaced by the associate justice of greatest seniority of the same.

CHAPTER III.

ADMINISTRATION AND GOVERNMENT OF CRIMINAL AUDIENCIAS AND CRIMINAL CHAMBERS OF TERRITORIAL AUDIENCIAS.

ART. 298. For the administration and government of criminal audiencias their presiding judges shall have the following duties:

1. To observe and cause to be observed this decree-law and all the laws referring to officers who are compelled to do so by reason of their office.

2. To cause proper order to be observed in courts by associate justices, auxiliary and subordinate officers.

3. To receive and dispatch official correspondence.

4. To take care that all the associate justices and auxiliary and subordinate officers comply with their duties strictly; to communicate to them the orders which they may deem advisable relating to the performance of the same, and to admonish privately those officers who show little diligence in the performance of their duties.

5. To bring to the knowledge of the proper authorities the offenses of associate justices which give rise to disciplinary punishment, and to the proper courts the crimes committed by said officers while performing their duties.

6. To report to the Government any vacancies that occur on entering and leaving the office by associate justices, judges, and auxiliary officers of the territory of the court whenever these officers are appointed, promoted, transferred, retired, discharged, or granted leave of absence.

7. To hear the complaints referring to the administration of justice brought by the parties interested in causes on account of delay of proceedings; to adopt such measures which are within their power and to report these measures to the proper chamber whenever the gravity of the case requires it.

8. To appoint, besides the subordinate officers whose appointment is within their power according to law, the employees of the secretary's office, whose salaries are to be paid from the appropriation for material; to grant them leaves of absence, and to discharge them at will.

9. To adopt the measures that are necessary or convenient for keeping and preserving the archives and libraries of courts in good order.

10. To preside over chambers of justice, having the right of speech, no other person being allowed to speak without their permission, and to cause good order to be observed in the same.

11. To bring to the knowledge of the Government through the presiding judges of the territorial audiencia what they may consider necessary or convenient for a better administration of justice within their territory.

12. To receive the excuses for nonattendance of the associate justices and auxiliary and subordinate officers of the court and to cause those officers who are to replace them to be notified.

13. To make to the *fiscal* such indications as they may deem advisable for making the administration of justice more efficient without restricting the liberty of action which that officer enjoys. To communicate, whenever they consider such action necessary, to the *fiscal* of the territorial audiencia such matters as are considered to merit the notice of that officer concerning the manner in which the duties of the *fiscal* of the criminal audiencia are performed.

ART. 299. For the transaction of administrative affairs, criminal audiencias shall assemble in committee in the following cases:

1. To read orders not of a general character directed to the court or

to its presiding judge when their execution is incumbent upon the court.

2. To dispatch the reports which the Government or their hierarchical superiors request on matters which are attributed to the audiencias and which on account of their character do not belong to chambers of justice.

3. To exercise disciplinary jurisdiction in the cases provided for in this decree-law.

4. To discharge the other duties intrusted to them by the laws whenever they are not of a judicial character.

Chambers of administration shall convene regularly at least once a week on the day fixed for the purpose, and extraordinarily, whenever the presiding judge deems it necessary, and always before or after court hours.

The weekly session may be omitted only when there is no business pending. When the *fiscal* can not attend these meetings he shall be substituted by the person who is to serve in his place. These meetings shall exercise disciplinary jurisdiction over municipal judges or justices of the peace and judges of examination for offenses relating to their duties in criminal matters and over auxiliary officers of the court.

The disciplinary jurisdiction over associate justices of criminal audiencias and chambers shall belong to the chamber of administration of the supreme court.

ART. 300. In each territorial audiencia there shall be a criminal chamber, but it shall constitute together with the civil chamber only one court, composed of one presiding judge, one *fiscal*, and the presiding judges of chamber, associate justices, and auxiliary officers belonging to each one.

ART. 301. Criminal chambers of territorial audiencias may be divided, if the number of the personnel composing it so permits, into two or more sections, considered necessary in order to render the administration of justice more prompt.

ART. 302. Criminal chambers and audiencias shall administer justice ordinarily in the capital of their respective province, circumscription, or territory, but extraordinarily and accidentally they may, by decision of the presiding judge, convene in court in other towns in order to facilitate the holding of trials and securing the evidence which must be procured in connection with the latter.

ART. 303. The presiding judges of territorial audiencias shall order that the associate justices of the criminal audiencias of their territory render service by turn in other audiencias of the same, whenever the number of associate justices is incomplete and it is impossible to replace them by substitutes.

TITLE X.

COMPOSITION AND POWERS OF AUDIENCIAS.

ART. 304. Audiencias shall convene *in banc:*

1. To constitute themselves into chambers of justice.

2. For actions not having a judicial character.

ART. 305. Audiencias shall convene *in banc* as chambers of justice in the cases expressly established in this decree-law.

ART. 306. Whenever audiencias convene *in banc* as chambers of justice they shall conform to the provisions of law established with regard to the latter.

ART. 307. The presiding judges of audiencias shall appoint auxiliary and subordinate officers, respectively, who are to assist the court *in banc* resolved into a chamber of justice.

ART. 308. Audiencias may convene *in banc* for actions not of a judicial character in the following cases only:

1. To decide what may be proper with respect to the execution of the appointment of the various officers, to swear them in, and to give them possession of their respective offices.

2. To furnish the reports asked of them by the Government on legislative reforms, which are or should be applied by the judicial power, or on other points that bear a more or less direct relation to the administration of justice.

3. Whenever it is thus decided by the chamber of administration for deliberation on any serious matter.

4. Whenever for the same purpose the presiding judge issues orders to this effect.

ART. 309. For the sessions of the court *in banc* treated of in the foregoing article, all the associated justices shall be cited by order of the presiding judge with sufficient notice to give them time to attend.

The *fiscal* shall likewise be cited, who shall be represented by the *teniente fiscal* or by the person who acts as his substitute, whenever he is unable to attend for just cause.

ART. 310. The category and seniority of each associate justice shall determine the preference to be given him in the seats.

The *fiscal*, or the person attending as his substitute, shall occupy the place which is assigned him in the part treating on the department of public prosecution.

ART. 311. The *fiscal* shall have the right of argument and vote in a court *in banc*. The *teniente fiscal*, or the *abogado fiscal*, acting as his substitute, shall have the right of argument but no vote.

ART. 312. Persons directly or indirectly interested in the matters treated of can not be present at arguments and vote on the same.

ART. 313. Matters carried to the court *in banc* shall be prepared with a written report of the department of public prosecution.

Matters which on account of their urgency do not permit it, or on account of their ease of resolution or simplicity do not require it, in the opinion of the presiding judge, shall be excepted.

ART. 314. As a basis for the argument there shall serve the written decision of the *fiscal*, if there be any.

ART. 315. Arguments shall be held on each one of the questions presented to the court *in banc*, if there is anyone who desires to speak, and shall be closed only when no one desires to do so, or when on the motion of any associate justice, or of the presiding judge, the point is declared to have been argued sufficiently.

ART. 316. The right of speech shall be granted by turn in the order in which it is asked, those persons desiring to argue against the decision alternating with those who sustain it.

The *fiscal* shall not be obliged to await his turn.

ART. 317. When an associate justice requests that arguments be suspended, in order to make a more thorough study of the question in discussion, it shall be postponed to another session, if the urgency of the matter permits it.

ART. 318. In the cases in which the matter requires it, the presiding judge, in view of the arguments, shall appoint an associate justice or a committee composed of two or three associate justices to formulate a draft of a resolution, reporting on it at another session.

ART. 319. When the arguments on any matter have been closed, and neither a postponement has taken place nor a committee has been appointed according to the provisions of the two preceding articles, a vote shall be taken, beginning with the associate justice of lowest seniority and continuing by inverse order of seniority up to the presiding judge.

ART. 320. The associate justice who disagrees with the majority may ask that his vote appear in the minutes without necessity of explaining the same in writing, and his wish shall be complied with. When he desires to put his request in writing, he shall do so, stating his reasons, and this shall be inserted in the minutes, provided that he presents it within the day following that on which the resolution has been adopted.

ART. 321. The secretary of administration shall report on the matters brought before a court *in banc;* he shall be present during their argument and vote; he shall draw up the minutes of the proceedings, mentioning all resolutions and referring to the papers of the proceedings in which they are inserted; he shall make on the margin a note of the names of the persons who were present at the session; he shall keep the book of minutes and shall give the proper certifications in a proper case.

ART. 322. The presiding judge of his own accord, or at the instigation of the *fiscal*, or of any associate justice, may order the secretary to retire whenever such action is advisable on account of the special circumstances of the business or of the good name of the magistracy.

In the latter case the associate justice of lowest seniority shall perform the duties of secretary, and shall draft and authenticate the minutes.

ART. 323. There shall be two books of minutes:

One shall be called the "general book" of minutes, and shall be in charge of the secretary of administration, in which shall be entered all the proceedings and resolutions which are not of a confidential character.

Another, called the "private book" of minutes, in which shall be entered all resolutions of a confidential character. This book shall be in the custody of the presiding judge.

When, in the same session, matters of both kinds are treated of, each resolution shall be entered in its proper book.

The individual votes of associate justices shall be recorded in the book in which the corresponding resolution is entered.

TITLE XI.

CHAMBERS OF ADMINISTRATION OF AUDIENCIAS FOR ADMINISTRATIVE AFFAIRS.

ART. 324. It shall be the duty of chambers of administration of audiencies:

1. To supervise the administration of justice in their respective district, making use of the powers conferred on them by this decree-law and other special laws.

2. To transact business which is intrusted to them, and which on account of its special character does not come under the jurisdiction of chambers of justice.

3. To draft the reports requested of them by the Government, relating to the administration of justice, to the organization and administration of courts, and to the administrative and economical affairs of the same.

4. To draft the reports which, with relation to the subjects referred to in the preceding paragraph, are requested by their presiding judge.

5. To submit to the Government such recommendations which it may consider convenient or necessary with relation to the affairs referred to in the two preceding numbers.

6. To recommend to the Government the discharge of employees of the court who are of Royal appointment, and to decree their suspension when they consider it necessary.

With regard to auxiliary officers, the provisions of this decree-law with respect to their discharge shall be observed.

7. To decide the questions relating to the distribution of business among chambers of the court to which they belong, considering said questions as matters of internal administration and not of competency, and for this reason giving them only an administrative character and not a judicial character.

8. In cases of disagreement between associate justices or between chambers which may influence in the administration of justice, or in the order and good name of the courts, to adopt the prudent measures required by the case, and if these do not suffice, to make to the Government such recommendations as are thought to be most effective.

9. To exercise disciplinary jurisdiction in the cases mentioned in this decree-law.

10. To resolve into chambers of justice, in cases in which such action is ordered by this decree-law, or by other legal provisions.

11. To perform the other duties conferred upon them by this decree-law or other special provisions.

ART. 325. Chambers of administration shall convene at least once a week on the day assigned for the purpose, and extraordinarily whenever the presiding judge deems it necessary, and always before or after court hours.

The weekly session may be omitted only when there is no business pending.

ART. 326. Chambers of administration shall not be considered as legally constituted unless they are attended by all the persons who compose it, or in their default by those who should replace the officers that are absent or detained by some impediment.

ART. 327. In all matters referring to the manner of arguing and vote, to the books of minutes and of secret votes, and to the duties of the secretary, chambers of administration shall conform to the provisions of Title X that refer to meetings of superior courts *in banc.*

ART. 328. The resolutions of chambers of administration shall always state reasons.

When they conform with the opinion written by the *fiscal* and with the grounds on which he bases the same, it shall be sufficient for them to express their agreement in both respects.

ART. 329. Whenever chambers of administration resolve themselves into chambers of justice, or convene for the exercise of disciplinary jurisdiction, the department of public prosecution shall not form part thereof and shall limit itself to exercising the special duties of its office.

ART. 330. In matters taken cognizance of by chambers of administration resolved into courts of justice, they shall comply with the provisions of the laws of procedure.

TITLE XII.

MANNER OF CONSTITUTING INFERIOR COURTS AND CHAMBERS OF JUSTICE OF SUPERIOR COURTS.

FIRST AND LAST CHAPTER.

ART. 331. Superior and inferior courts shall hold public sessions on all days that are not holidays in the building designated for the purpose and during the time stated below:

Municipal judges or justices of the peace for the time necessary for the transaction of the business of the day. From this provision there

shall be excepted those judges who perform their functions in towns with less than 500 inhabitants, who may assign only two days in a week for holding sessions, if they suffice for the transaction of their business.

Judges of first instance and examination for three hours at least.

Audiencias for four hours, of which three at least shall be devoted to the hearing of actions and causes.

ART. 332. Judges and presiding judges of courts shall designate the time hearings are to begin.

A placard constantly attached to the outside of the chambers of inferior or superior courts shall state the hour of opening.

ART. 333. No judge or associate justice shall fail to attend the audiencia without just cause.

ART. 334. Whenever a municipal judge or justice of the peace can not attend court, he shall notify his substitute sufficiently in advance in order that the court may be opened and the transaction of judicial business not suffer any delay.

If his failure to attend court exceeds five days, he shall inform the proper audiencia thereof.

ART. 335. Judges of the first instance or examination shall notify municipal judges or justices of the peace of the town in which they reside, in order that the latter may substitute them:

1. Whenever for any reason whatsoever they can not attend court.

2. Whenever they are obliged to leave the town of their residence in order to institute preliminary proceedings or other judicial actions.

3. When on account of a justifiable impediment they can not perform some judicial actions in the seat of the subdistrict.

ART. 336. When judges of first instance or examination can not hold public sessions for more than five days, they shall inform the proper audiencia thereof.

ART. 337. Associate justices who can not attend court for justifiable causes, shall inform the proper presiding judges thereof with sufficient notice, in order that the latter may, in a proper case, notify the persons who are to substitute them.

ART. 338. There shall be kept in audiencias a book of attendance, in which the secretary of administration shall make on each day of court sessions a note by chambers of the names of the associated justices who attended court, of those who are exempt from attending, and of those who have been excused, with a statement of the cause. The presiding judge of the court or the officer replacing him shall countersign these memoranda every day.

ART. 339. Three associate justices shall be sufficient to constitute a chamber in all cases in which the law does not require a fixed number of associate justices.

ART. 340. Associate justices of audiencias and presiding judges of chambers shall alternate among themselves, passing from one to the other whenever the service requires it. Every two years the colonial

department, hearing the chambers of administration, may modify the distribution of associate justices in chambers.

ART. 341. Without prejudice to the provision of the preceding article, the secretary for the colonies may, on the recommendation of the respective chamber of administration, transfer associate justices of audiencias from one audiencia to another, provided that such action is suggested by the convenience of the service.

ART. 342. Whenever there is lacking in a chamber the number of associate justices necessary to constitute the same for hearing actions and causes, and that number must be completed with the superfluous ones of other chambers or with substitutes, in accordance with the provisions of this decree-law, the ordinary transaction of business or the hearings shall be suspended until the necessary number has been obtained.

ART. 343. The appointments of the persons assigned to attend a chamber other than that to which they belong, shall be immediately communicated to the persons designated, who shall excuse themselves, if, in the opinion of the presiding judge, there is a justifiable cause therefor.

When the presiding judge thinks that the reasons for non-attendance are sufficient, he shall appoint another associate justice, with respect to whom the provisions of the preceding article shall be observed.

ART. 344. When the officers designated do not excuse themselves from attendance in civil matters, the solicitors of the parties shall be informed of their names, and the hearing shall be begun immediately, unless a challenge is made at once, even if verbal. In the latter case, after the challenge has been formulated in writing within the third day, the interlocutory issue of challenge shall be decided in the established form.

ART. 345. When no challenge having been made at once, and the hearing is proceeded with in accordance with the provisions of the preceding article, the discussion of the decision shall be suspended for three days. Substitute associate justices may be challenged within this time; after this period has elapsed, and no use of this privilege having been made, requests of challenges shall no longer be admitted, and the period assigned in which to render a decision shall be considered as begun.

ART. 346. If a challenge has been formulated and admitted as proper, the hearing shall remain without effect and shall take place again with associate justices of the chamber, or if it is not possible, the proceedings prescribed in articles 342, 343, 344, and in this article shall be again observed.

When a challenge is declared not well taken, a decision shall be pronounced by the associate justices who shall have attended the hearing, within the legal period, which shall begin on the day following the one on which a decision on the challenge is rendered.

ART. 347. In criminal causes, when the associate justices detailed to make up the required number do not form part of the regular personnel of the criminal chamber, their detail shall be communicated to the parties at least twenty-four hours before beginning the public trial. Challenges made after this time shall not be admitted.

Challenges made within the proper period shall be acted upon in the form prescribed.

TITLE XIII.

COURT SESSIONS AND POLICE OF INFERIOR AND SUPERIOR COURTS.

FIRST AND LAST CHAPTER.

ART. 348. Ordinary transaction of business and hearing of actions and causes shall take place in public.

ART. 349. Superior courts may, notwithstanding the provisions of the preceding article, order that the transaction of business and the hearing of actions and causes be made behind closed doors, in all cases in which such action is required by considerations of morality and decorum, at the request of one of the parties interested, at the instigation of the department of public prosecution, or of its own accord, before or during the hearing.

In the latter case the court shall order what is proper, after giving a brief hearing to the parties. There shall be no appeal from the decision.

ART. 350. Secretaries shall report the ordinary business in the order in which the petitions were presented in their respective offices.

ART. 351. Hearings of civil matters and of criminal causes shall be designated in the order of their conclusion.

From this provision shall be excepted questions of provisional maintenance, of competency, possessory injunctions, injunctions of new and injurious works, attachments, denial of judgment or proof, causes for crimes for which the law fixes a penalty greater than that of "presidio mayor," and other matters which by explicit prescriptions of other laws are given preference, which being concluded, shall be placed before the others for which a date has not yet been assigned.

ART. 352. Actions and causes shall be heard on the day assigned. If, at the conclusion of the hours of a court session, the hearing of any proceeding, action, or cause has not been concluded, it may be suspended to be continued on the following day or days, except when the presiding judge prolongs the session.

ART. 353. The hearing of civil matters may be suspended on the assigned day in the following cases only:

1. When it is prevented because of an action or a cause continued from the preceding day.

2. When for unforeseen reasons the number of associate justices required for a decision is lacking.

3. When it is requested by any of the parties, basing the request on the fact that their counsel has been prevented from appearing at the hearing, for a legitimate cause, in the opinion of the court.

ART. 354. Hearings of criminal causes may be suspended in the following cases only:

1. For any of the causes stated in No. 1 of the preceding article.

2. When, in criminal causes, an important witness is absent, or any steps to obtain proofs are wanting, on which, in the opinion of the court, its decision depends.

3. When the department of public prosecution, the defendant, or his counsel, or that of the accuser, in causes which can not be prosecuted officially, have been prevented from attending the hearing by legitimate causes.

ART. 355. When, without just cause, a lawyer who has been assigned by the court for the defense fails to attend, he shall be punished in a disciplinary manner.

ART. 356. A hearing which has been suspended shall be reassigned for the earliest date when the cause for suspension has disappeared, without prejudice in so far as possible to the order adopted for the hearing of other actions and causes.

The excess of costs occasioned by the suspension, for an unjustifiable failure to attend, of a litigant, the defendant, his counsel, the counsel of the accuser, in causes which can not be prosecuted officially, or of any important witness, shall always be charged to the person who has caused the same.

ART. 357. When, after a hearing has begun, any associate justice becomes sick or is prevented in any other manner from attending, and it is improbable that he will be able to attend after a few days, a new hearing shall be instituted, the number of associate justices being supplemented by the person or persons who should replace the absentee.

ART. 358. Parties to an action or a cause may, with the permission of the presiding judge, make such statements as they deem proper for their defense during the trial or when a petition is being presented in which they may be concerned.

The presiding judge must grant them the right of speech so long as they confine themselves to facts and preserve due decorum.

ART. 359. Visitors to court rooms shall remove their hats, remain silent, preserve good behavior, and observe the rules issued by the presiding officer for keeping order.

Associate justices, *fiscales*, and their auxiliary officers shall be respected in the same manner in any act or place in which they perform their respective duties.

ART. 360. Persons interrupting the hearing of any trial, cause, or other solemn judicial act, by showing ostentatiously their approval or disapproval, lacking the respect and consideration due courts, or in any way disturbing order, without, however, committing a crime by this

action, shall be admonished at once by the presiding judge, and expelled from the court room if they disobey the first warning.

ART. 361. Persons resisting an order of expulsion shall be arrested and disciplined without appeal by a fine not exceeding 10 pesos in municipal courts or courts of justices of the peace, 15 pesos in courts of examination or of first instance, 20 pesos in criminal audiencias, and 30 pesos in territorial audiencias; and they shall not be released from arrest until they have paid the fine or otherwise have remained under arrest the number of days necessary to serve the sentence, computed at the rate of 2 pesos 50 centavos a day.

ART. 362. In the manner expressed in the preceding article, a punishment shall be imposed upon witnesses, experts, or any other persons who, either as parties or as their representatives, are guilty during hearings or solemn judicial acts, by speech, act, or writing, of lack of deference, respect, or obedience due courts, when such acts do not constitute crimes.

ART. 363. Persons who are subject to disciplinary jurisdiction in accordance with the provisions of this decree-law are not included in the provisions of the two preceding articles.

ART. 364. When the acts treated of in the two preceding articles are so serious as to be classed as crimes or offenses, their perpetrators shall be detained at once, the proper preliminary proceedings being instituted, and the prisoners being placed in the custody of the court of competent jurisdiction.

ART. 365. All judicial acts performed under the influence of intimidation or force shall be null.

Judges, superior courts, and chambers which have yielded to intimidation or force shall, as soon as they find themselves free therefrom, declare all acts performed under its influence null, and shall at the same time bring an action against the guilty parties.

TITLE XIV.

INSPECTION AND SURVEILLANCE OF THE ADMINISTRATION OF JUSTICE.

FIRST AND LAST CHAPTER.

ART. 366. The inspection and supervision of the duties of judges and superior courts shall be exercised:

By the presiding judges of superior courts.

By the chambers of administration of audiencias and of the supreme court.

By the chambers of justice of audiencias and of the supreme court.

By the courts of examination and of first instance.

ART. 367. The inspection and supervision shall be exercised by the presiding judge of the supreme court, and by presiding judges of audiencias, and by examining and first instance judges, by virtue of the powers and duties that are assigned to them.

ART. 368. In order to facilitate the inspection and supervision, annual statements of the civil and criminal matters pending or completed during the preceding judicial year shall be submitted:

By municipal courts or courts of justices of the peace to judges of examination and first instance.

By courts of examination and first instance to audiencias.

By audiencias to the supreme court.

ART. 369. The statements submitted by the judges of examination and first instance to the audiencias shall contain a summary of the ones they may have received from the municipal courts or from the courts of justices of the peace, besides their own, which it is their duty to forward.

The reports of the audiencias shall be accompanied by a summary of the statements of the municipal courts or courts of justices of the peace, and courts of examination and first instance.

ART. 370. In the supreme court a general summary of these statements shall be made and forwarded to the Government, together with those of the said court.

ART. 371. The regulations shall fix the form and the date on which each superior and inferior court must submit to their respective superior the statements referred to in the three preceding articles.

ART. 372. The presiding judge of the supreme court and the presiding judges of audiencias may order visits of inspection:

By order of the Government.

Officially.

At the instance of the department of public prosecution.

At the instance of chambers of administration.

At the instance of chambers of justice.

ART. 373. Judges of first instance and examination can not order visits of inspection of municipal courts or courts of justices of the peace; but when an inspection of any of said courts is necessary in their judgment, they shall communicate their opinion to the presiding judge of the audiencia, in order that the latter may decide what he may deem proper after hearing, in a proper case, the chamber of administration.

ART. 374. The chambers of administration may institute visits of inspection, whenever they consider it advisable, as a consequence of the memorials presented by judges of first instance or examination.

ART. 375. The chambers of justice shall make an inspection in the civil or criminal matters of which they take cognizance.

When in their judgment it would be advisable, in order to avoid abuses, to adopt some measure which does not lie within their power, or to make an inspection of some inferior or superior court, they shall state their opinion to the presiding judge, in order that the latter may decide what is proper after hearing the chamber of administration.

ART. 376. As visiting inspector there shall be selected an officer of a rank higher than that of the officers whose office is to be inspected.

ART. 377. The presiding judge of the supreme court may, whenever he considers such action proper, delegate to the presiding judge of an audiencia the appointment:

Of the associate justice to inspect a court of first instance.

Of the associate justice or judge of first instance to inspect municipal courts.

ART. 378. In the cases of delegation mentioned in the preceding article the judges and associate justices appointed for the inspection shall report to the presiding judges of the respective audiencia on all matters referring to the inspection.

ART. 379. In this service associate justices of audiencias shall serve by turn, without distinction between those composing the civil and criminal chambers. Presiding judges of audiencias and their chambers shall be exempted from this service. Excuses for exemption from this service shall not be accepted when not based on the impossibility to render it. Presiding judges of audiencias shall decide on said excuses according to their discretion, and shall submit them, with their own report containing a statement of reasons, to the colonial secretary.

ART. 380. The visits of inspection, made in conformity with the provisions of this title, shall include the examination of everything that refers to the rules established for the government of superior courts, and for a good administration of justice in the offices of their secretaries and in all their dependencies.

ART. 381. Visits of inspection in the cases expressly ordered by the presiding judges of audiencias or of the supreme court may include:

1. The civil registry.
2. The registry of property.
3. Registries of notarial offices.
4. The verification of the correctness of the annual reports.

ART. 382. The inspectors shall write a report of the inspection intrusted to them, which shall be forwarded to the *fiscal* of the court whose presiding judge may have ordered the visit.

ART. 383. The board of administration of the proper court, by virtue of the report of the *fiscal*, shall adopt such measures as lie within its power, and if it does not extend far enough it shall make such recommendations as it may consider proper to the Government.

ART. 384. The Government may appoint Royal commissaries to inspect superior and inferior courts whenever it considers such action necessary.

ART. 385. For the discharge of their duties, visiting inspectors shall be allowed a secretary and the other necessary employees, who shall be paid from the appropriations provided for these cases in the budgets of the respective island.

TITLE XV.

DISCIPLINARY JURISDICTION.

FIRST AND LAST CHAPTER.

ART. 386. The following officers shall be subject to disciplinary jurisdiction:

1. Judges and associate justices.
2. Auxiliary officers of inferior and superior courts.
3. Attorneys and solicitors.

ART. 387. Disciplinary jurisdiction over judges and associate justices shall be exercised:

By the judges of first instance over municipal judges or justices of the peace in a proper case.

By the chambers of administration of audiencias over judges of first instance and examination.

By the chamber of administration of the supreme court over associate justices.

The chambers of administration of audiencias and that of the supreme court, in order to exercise disciplinary jurisdiction, shall resolve themselves into chambers of justice.

ART. 388. The disciplinary jurisdiction shall not extend to acts or omissions which constitute a crime or to acts of private life which have not been publicly exposed.

ART. 389. Judges and associate justices shall be punished in a disciplinary manner:

1. When they show disrespect to their hierarchical superiors, either in speech, writing, or action.
2. When they show serious disregard of the respect due their equals.
3. When they trespass the reasonable limits of their authority with respect to the auxiliary and subordinate officers of inferior or superior courts, or with respect to those who assist them in judicial matters or those who attend the court-room, with whatever object it may be.
4. When they are negligent in fulfilling their duties.
5. When by the irregularity of their moral conduct or their bad habits which lower them in the public esteem, they affect the decorum of their office.
6. When, on account of expenditures beyond their means, they contract debts which result in writs of execution against them.
7. When they recommend to judges or superior courts matters pending in suits where the parties are present at the trial in criminal causes.
8. When they address to the executive power, to public officers, or to official corporations congratulations or censures for their actions.
9. When they take part, other than by casting their personal vote, in popular elections of the territory in which they perform their functions.

Notwithstanding this, they shall exercise the functions and fulfill the duties which are imposed upon them by virtue of their offices.

10. When they take part in meetings, manifestations, or other public acts of a political character, even if said acts are permitted to all other Spaniards.

11. When they attend *in corpore*, officially, or in ceremonial dress, feasts or public occasions, excepting only when it is their object to compliment the monarch or the regent of the realm, or when the Government gives explicit orders therefor.

12. When, without authorization from the colonial department, they publish writings defending their official conduct, or criticising that of other judges or associate justices.

ART. 390. Disciplinary penalties may be inflicted only:

By the presiding judges of the courts who have disciplinary jurisdiction in the specific case.

By the *fiscales* of the same courts.

ART. 391. The presiding judges as well as the *fiscales* may inflict punishment by virtue of information of a positive character which has come to their knowledge; by complaint of the wronged parties, with sufficient facts to prove the existence of acts subject to disciplinary jurisdiction, or when they are notified by their hierarchical superiors.

ART. 392. The proceedings shall have merely the character of an examination, and shall consist of hearing the judge, or the associate justice and the *fiscal*, against whom charges are brought on the facts; of admitting evidence presented by both of them; of procuring the complement of the other evidence which may contribute to explain or prove the facts, and of receiving a written plea or argument from the party concerned and from the department of public prosecution.

ART. 393. The judge or the associate justice against whom said proceedings are directed shall be heard before the *fiscal* when the presiding judge has instituted the proceedings.

When the *fiscal* shall have instituted said proceedings, he shall be heard first.

The party whose papers are admitted in the hearing after those of the opponent, shall have the papers of the opponent submitted to him.

ART. 394. When the proceedings have been completed, the court or the chamber of administration shall either impose the disciplinary penalty or declare that there are no grounds for punishment.

ART. 395. The penalties imposed on municipal judges shall consist of only:

A simple reprimand.

A fine not less than 12 pesos nor more than 120 pesos.

ART. 396. The penalties imposed on judges of first instance and examination and associate justices shall consist of:

A simple reprimand.

A specific reprimand.

Postponement of promotion.

Loss of salary.

Suspension from office and loss of salary.

ART. 397. A simple reprimand shall consist of the literal communication of the penalty which the presiding judge of the court which imposed it shall make to the delinquent officer directly, if the latter is a municipal judge, judge of first instance and examination, or a presiding judge of an audiencia, and through the presiding judge of the proper court in all other cases.

ART. 398. The specific reprimand shall consist of a communication made in the manner specified in the preceding article, and of the loss of salary for a period of from one to three months.

ART. 399. The postponement of promotion shall consist of a deprivation of the right of promotion for a period of from six months to one year. This period shall be counted:

For strict seniority, from the day on which promotion would be due on account of the death of the person which causes a vacancy, or for any other reason.

For the promotions in which the appointment may be given to officers belonging to a particular part of the scale of service, or to the whole scale, from the day on which the sentenced officer acknowledges receipt of the communication informing him of the decision of the court.

ART. 400. The loss of salary shall last not less than three months nor more than six.

ART. 401. The penalty of suspension from employment and loss of salary shall last at least three months and may extend to twelve.

In cases of repetition of acts of the same kind by an officer who was punished for them previously with suspension from employment and loss of salary, said punishment shall always last one year.

ART. 402. Courts and chambers of administration may impose the penalties specified in the preceding article according to their good judgment, taking into account the greater or lesser gravity of the acts and omissions in question.

ART. 403. The penalties imposed upon municipal judges or justices of the peace and judges of first instance and examination may be appealed from to the chambers of administration of audiencias within the ten days following the one on which the sentence was communicated to the delinquent officers.

The chambers of administration, adding to the facts those that are presented or forwarded directly by the parties, shall confirm without the formality of a trial the sentence or penalty, if they consider it just; and otherwise they shall annul, mitigate, or increase it as they may deem proper.

ART. 404. The decisions of the chambers of administration of audiencias can not be appealed from.

ART. 405. Auxiliary officers of superior courts shall be punished in a

disciplinary way, by judges of first instance and examination and by chambers of administration of audiencias, in the following cases:

When they are included in one of the cases specified in article 389 of this decree-law.

When they do not show due consideration to those who appeal to them in matters relating to their duties, and when they do not show themselves impartial in performing the same.

When they have vices which lower them in the public esteem.

ART. 406. Inferior courts shall exercise a disciplinary jurisdiction, in the cases specified in article 389, over the auxiliary officers who discharge their duties in said courts.

ART. 407. The penalties imposed upon auxiliary officers of inferior and of superior courts shall consist of—

Notice.

Warning.

A fine not exceeding 20 pesos in municipal courts or courts of justices of the peace; 40 pesos in courts of examination or first instance; 48 pesos in criminal audiencias, and 100 pesos in territorial audiencias.

A reprimand, behind closed doors, by the judge or by the presiding judge of the court in which the delinquent renders service.

A reprimand, behind closed doors, before the court or chamber to which the delinquent officer belongs.

Suspension from employment and loss of salary and emoluments for a period not to exceed six nor less than three months; in cases of repetition of acts of the same kind, this period may be extended to one year. During the suspension the salary and emoluments shall be paid to those who discharge their duties.

ART. 408. Auxiliary officers may appeal—

From the penalties imposed by municipal courts to courts of first instance or examination, against whose decision mitigating or increasing the penalty there shall be no further appeal.

From those imposed on their auxiliary officers by judges of first instance or examination, to chambers of administration of audiencias.

ART. 409. There shall be no further appeal from the penalties imposed by chambers of administration of audiencias.

ART. 410. In appeals entered before chambers of audiencias by auxiliary officers against the penalties imposed by municipal judges and judges of examination or of first instance, and against an appeal from said penalties when there are grounds therefor, the provisions of article 403 shall be observed in so far as they are applicable.

ART. 411. Attorneys and solicitors shall be punished in a disciplinary manner by municipal courts and by chambers of justice of all other courts, in the following cases:

When in the exercise of their profession they show, by work, writing, or act, a lack of the respect due inferior and superior courts.

When in defense of their clients they show a serious and unnecessary degree of incivility toward their colleagues.

When, after being called to order in oral allegations, they disobey the judge presiding over the court.

ART. 412. Notwithstanding the provisions of the foregoing article, they may, after having been called to order and after having asked and obtained permission from the judge or officer presiding over the act, explain the words they may have used and show the meaning or intention which they wished to convey, or fully apologize to the inferior or superior court.

ART. 413. The penalties imposed upon attorneys and solicitors shall always be imposed by the superior or inferior court or by the chamber of justice in which the proceedings giving rise to them have been had, or in which the proper decorum has not been observed in oral defenses.

ART. 414. Penalties shall be pronounced clearly, without taking into account more facts than appear in the documents or in the certificate which has been drawn up in the same proceedings by the secretary by order of the presiding judge, both with regard to the matter which is the object of the penalty as well as with reference to the explanations offered.

ART. 415. From the decisions in which municipal judges, judges of first instance and examination, and criminal audiências have imposed penalties on attorneys or solicitors, appeals may be taken to territorial audiencias.

From the penalties imposed in chambers of justice of territorial audiencias a petition may be made only before the same chamber which has imposed said penalties.

ART. 416. The appeals and petitions referred to in the foregoing article shall be instituted in the manner established for interlocutory issues in civil matters.

ART. 417. The provisions of this title shall not interfere with the power of inferior or superior courts to impose on attorneys and solicitors the proper penalties, in accordance with the laws, for offenses and transgressions which are committed in the exercise of their duties, and which are not included in article 411.

TITLE XVI.

THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 418. The department of public prosecution shall see to the observance of this decree-law, shall institute judicial actions in matters relating to the public welfare, and shall act as the representative of the Government in its relations with the judicial power.

ART. 419. In all inferior and superior courts there shall be one or more representatives of the department of public prosecution.

ART. 420. The Government may increase the number of *abogados fiscales* whenever it is required by the service, and to reduce it when the service may be performed with a smaller number than that assigned at the proper time for each court.

In either case, an investigation shall be previously made, in which the chamber of administration and the *fiscal* of the respective court shall be heard.

In all cases the department of the treasury and of the colonies of the council of state shall be heard.

CHAPTER I.

APPOINTMENT OF OFFICERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 421. The *fiscales* of criminal audiencias shall submit the proper recommendations to territorial audiencias for the appointment of *fiscales* of municipal courts.

The *fiscales* of the territorial audiencias shall appoint directly the *fiscales* of municipal courts or of courts of justices of the peace, in the circumscription or the province of the criminal chamber, without necessity of recommendation, after receiving the reports from judicial and administrative authorities they may deem proper to request.

ART. 422. For selections, incapacities, excuses, claims, decisions of proceedings, filling of vacancies, and publication of appointments of *fiscales* of municipal courts or of courts of justices of the peace, and their substitutes, there shall be observed the provisions of this decree-law referring to municipal judges, with the following exception only:

The powers assigned to and duties imposed on presiding judges of audiencias shall be considered as assigned to and imposed on the *fiscales* of the same.

ART. 423. Wherever *promotores fiscales* do not exist, the *fiscales* of municipal courts who are lawyers shall represent the department of public prosecution in all matters in which the latter should be heard, in accordance with the law of criminal procedure or any other laws.

The *fiscales* of audiencias, notwithstanding this provision, no matter whether the *fiscales* of municipal courts or of courts of justices of the peace are lawyers or not, may make use of their auxiliary officers, or appoint lawyers to discharge the duties of the department of public prosecution in the matters referred to in the foregoing paragraph, or examine personally the proceedings in progress in courts of first instance and examination.

The lawyers discharging said duties shall receive the same remuneration as is given to substitutes.

ART. 424. The appointments of officers of the department of public prosecution in the various cases shall be made in accordance with the provisions contained in chapter 2, title 3, of this decree-law.

CHAPTER II.

GENERAL CONDITIONS FOR ALL OFFICES OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 425. To the persons filling offices of the department of public prosecution, of whatsoever rank or category, there shall be extended all

the provisions established in articles 73 to 79 for judicial officers in matters referring to qualifications, incapacity, absolute or relative incompatibility, and exemption from obligatory duties.

ART. 426. The incompatibilities established in article 80 shall likewise be extended to the proper officers of the department of public prosecution.

From the provisions of the preceding paragraph there shall be excepted:

1. The *fiscales* of municipal courts or courts of justices of the peace and their substitutes.

2. The substitutes of *abogados fiscales* of audiencias.

3. Persons rendering service in the department of public prosecution accidentally or provisionally.

4. Persons discharging duties of the department of public prosecution in Habana.

The prohibitive provisions established for judicial officers in article 82 shall include the persons obtaining appointments in the department of public prosecution, in the same superior courts, and within the same territory. Persons violating these provisions shall incur the penalty fixed in article 83. From this provision there shall be excepted the officers that are included in the first three numbers of the foregoing article.

ART. 427. Persons appointed to offices of the department of public prosecution can not practice law. From this provision there shall be excepted only those mentioned in the first three numbers of article 426.

ART. 428. In order to hold office in the department of public prosecution, it shall be necessary, besides possessing the qualifications prescribed in article 73, to be a licentiate at law, graduated from a university supported by the State. From this provision there shall be excepted only the *fiscales* of municipal courts or of courts of justices of the peace.

CHAPTER III.

SPECIAL QUALIFICATIONS OF FISCALES OF MUNICIPAL COURTS OR OF COURTS OF JUSTICES OF THE PEACE.

ART. 429. The *fiscales* of municipal courts or of courts of justices of the peace and their substitutes shall possess the qualifications which are required of municipal judges or justices of the peace according to article 84.

ART. 430. The preference granted to lawyers over persons who are not such, applicable, according to article 85, to municipal courts or courts of justices of the peace, shall be extended to the offices of *fiscales* of the same, provided there are no reasons to the contrary. In this case, their not having reached the age of twenty-five shall not be an obstacle.

CHAPTER IV.

OATHS AND TAKING POSSESSION OF OFFICE BY OFFICERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 431. Officers of the department of public prosecution, in taking possession of office, shall be formally sworn in, in the same manner as judicial officers, swearing:

To observe and cause to be observed the Constitution of the Monarchy.

Allegiance to the King.

To promote the administration of justice.

To carry out all the laws and regulations referring to the duties of their office.

ART. 432. The *fiscales* of the audiencia of Habana, of territorial and of criminal audiencias, shall be sworn in and shall take possession of their offices before their respective courts, in the presence of the judges of first instance, examining judges, and municipal judges of the town, and the auxiliary and subordinate officers of the audiencias.

The *tenientes fiscales* of the said audiencias, with the exception of those of criminal audiencias, shall be sworn in and shall take possession of their offices in the same manner as the associate justices of the same.

The *abogados fiscales* of the said audiencias and the *tenientes fiscales* of criminal audiencias shall be sworn in before the chamber of administration of the respective territorial audiencia, taking possession before the proper court.

ART. 433. The provisions of this decree-law referring to the swearing in of municipal judges or of justices of the peace and their taking possession of office shall apply also to the representatives of the department of public prosecution in the said courts.

CHAPTER V.

DATES AND POSTPONEMENT OF EMBARKATION AND OF TAKING PERSONAL POSSESSION OF OFFICE.

ART. 434. The rules established in this decree-law for judicial officers with reference to dates, postponements of embarkation, and taking personal possession of office, shall be applicable to the officers of the department of public prosecution.

CHAPTER VI.

SENIORITY, PRECEDENCE, TITLES, AND DRESS OF OFFICERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 435. In order to compute the seniority of officials of the department of public prosecution, the same rules shall be observed as are established in this decree-law in the various cases for judicial officers.

ART. 436. The *fiscales* of audiencias, in sessions *in banc* and in chambers of administration, shall be given a place and seat among the presiding judges of chambers, preserving among these officers the place that belongs to them by right of seniority, without any discrimination because of the office which they respectively hold.

ART. 437. The *tenientes fiscales* of audiencias, when attending sessions *in banc* and chambers of administration, the respective *fiscal* being prevented from attending, shall occupy the place and seat from the right after the last associate justice.

When the *fiscal* and the *teniente fiscal*, being prevented from attending, are substituted by the *abogado fiscal*, the latter shall occupy the place and seat after the last associate justice from the left.

ART. 438. In chambers of justice the *fiscales* of audiencias shall have a seat at the right side of the court table.

The *tenientes fiscales* and the *abogados fiscales*, when performing the duties of their offices, shall take seats at the left side.

ART. 439. Greater seniority shall give right of precedence—

1. In the order of seats and places among officers belonging to the same category.

2. When the *abogados fiscales* are substitutes for the *tenientes fiscales*.

3. When the *fiscales* attend chambers of administration, in cases of vacancies, or of any impediment of the *fiscales* and the *tenientes fiscales*.

ART. 440. The officers of the department of public prosecution shall have the same title as is given to their equals in the judicial service.

ART. 441. The provisions of articles 132, 133, 134, and 135 of this decree-law, referring to officers of the judicial service, are applicable also to officers of the department of public prosecution.

ART. 442. The *fiscales* of municipal courts or of courts of justices of the peace, on official or formal occasions, while attending as such, shall wear a medal similar to that prescribed for municipal judges, made according to a model which is or may be hereafter prescribed, and bearing the following inscription: "Ministerio fiscal" (department of public prosecution).

ART. 443. The other officers of the department of public prosecution, of whatsoever class and category, shall wear ceremonial dress on the occasions referred to in article 137 of this decree-law.

The ceremonial dress of the other officers of the department of public prosecution of the various ranks shall be the same as that used by the judges and associate justices with whom they are respectively equal in rank.

ART. 444. The prohibition of article 139 of this decree-law shall be extended to the department of public prosecution.

ART. 445. The reverse of the medals used by the officers of the department of public prosecution shall bear "Ministerio fiscal" (department of public prosecution) instead of the word "Justicia" (justice).

CHAPTER VII.

PAY OF OFFICERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 446. The officers of the department of public prosecution shall receive the following yearly salaries:

The *promotores fiscales* of the entrance category, 600 pesos as pay and 900 pesos as extra pay.

The *promotores fiscales* of the promotion category, 750 pesos as pay and 1,125 pesos as extra pay.

The *promotores fiscales* of the final category and the *abogados fiscales* of criminal audiencias, 900 pesos as pay and 1,350 pesos as extra pay.

The *abogados fiscales* of territorial audiencias and the *tenientes fiscales* of criminal audiencias, 1,100 pesos as pay and 1,660 pesos as extra pay.

The *abogados fiscales* of the audiencia of Habana and the *tenientes fiscales* of territorial audiencias, 1,400 pesos as pay and 2,100 pesos as extra pay.

The *fiscales* of criminal audiencias, 1,700 pesos as pay and 2,550 pesos as extra pay.

The *fiscales* of territorial audiencias and the *teniente fiscal* of the audiencia of Habana, 2,000 pesos as pay and 3,000 pesos as extra pay.

The *fiscal* of the audiencia of Habana, 2,300 pesos as pay and 3,550 pesos as extra pay.

ART. 447. The *tenientes fiscales* and the *abogados fiscales* who leave the place of their residence to attend extraordinary chambers of audiencias, shall receive an extra pay of 5 pesos for each day spent away from their place of residence.

This increase shall not be computed for retired pay.

CHAPTER VIII.

TRANSFERS, SUSPENSIONS, DISCHARGES, AND RETIREMENTS OF OFFICERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 448. Transfers, suspensions, discharges, and retirements of officers of the department of public prosecution shall be made in every respect in accordance with the form and rules established in Title IV of this decree-law for officers of the judicial service.

CHAPTER IX.

LIABILITY OF OFFICERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 449. There may be demanded of officers of the department of public prosecution a liability, civil as well as criminal, in the cases and in the manner established in Title V of this decree-law, without further modifications than those mentioned in the following articles.

ART. 450. A trial for criminal liability may be instituted only by virtue of a ruling of the competent superior court or at the instance of the department of public prosecution.

ART. 451. Courts before officially proceeding against officers of the department of public prosecution shall grant a hearing to the immediate hierarchical superior of said officers, communicating to him the facts on which the cause is to be based.

CHAPTER X.

POWERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 452. It shall be the duty of the department of public prosecution:

1. To see to the carrying out of the laws, regulations, ordinances, and provisions of an obligatory character referring to the administration of justice, and to require their observance.

2. To give to its respective subordinates the general or special instructions for the fulfillment of their duties, with the aim of making the service of the department as uniform as possible.

3. To preserve intact the powers and competency of superior and inferior courts in general, to defend the same from any invasion coming either from the judicial or the administrative service, raising questions of competency, appeals on account of abuses of jurisdiction, or appeals from wrongs of ecclesiastical courts (recursos de fuerza en conocer) and opposing questions of competency that are raised unjustly against the inferior or superior courts in which the officers of said department discharge their duties.

4. To represent the State, the Administration, and public educational and benevolent institutions in questions in which they are a party, either as plaintiffs or as defendants.

5. To take part in an official capacity in causes concerning the civil status of persons.

6. To represent and defend minors, incapacitated persons, absentees, or persons prevented from administering their property, until guardians have been selected for the protection of their property and rights.

7. To promote the institution of criminal causes, for crimes and offenses, whenever their perpetration comes to the knowledge of the officers of the department; if said causes have not been begun *ex officio* by the proper officers.

8. To appear for the Government in all criminal causes, with the exception only of those which, according to the laws, may only be instituted at the instigation of the aggrieved party.

9. To investigate with special diligence arbitrary arrests that are made and to see to their punishments.

10. To attend hearings in matters in which the department constitutes a party, with the exception of such matters only in which the Government can not be represented.

11. To raise questions of disciplinary punishment in cases in which such action is proper according to the laws.

12. To see to the fulfillment of decisions in actions and causes in which the department acts as a party, and to this effect officers of the department shall have the right and obligation to visit penal institutions, to see whether sentences of criminal causes are being executed in the form imposed.

They shall not, nevertheless, introduce changes in the management and discipline of prisons, confining themselves, in a proper case, to informing the Government of the defects which they have noticed and the means of correcting them.

13. To bring to the knowledge of the supreme court and of the Government serious abuses and irregularities noticed in inferior and superior courts, when the department has no power to remedy them in any other way.

14. To express verbally an opinion in urgent matters of easy solution which shall be stated in the ruling or decree pronounced in the matter.

15. To request of inferior courts and the superior court of the territory in which officers of the department render service, and which are subordinate to the court to which they belong, causes and matters that have been terminated, in order to exercise supervision over the administration of justice, and to demand the correction of abuses that may occur.

16. To request assistance from the authorities, of whatsoever class they may be, for the discharge of the duties of the department, said authorities being responsible according to law for the consequences resulting from their failure or negligence in rendering said assistance.

17. To fulfill the other obligations imposed upon the department by the laws.

ART. 453. *Fiscales* shall adopt such rules as they think proper for the distribution of the work among the *tenientes fiscales* and the *abogados fiscales* who are under their immediate orders, preserving equality of work among them.

ART. 454. The *fiscales* of the respective audiencias shall appoint substitute *abogados fiscales* to replace the regular officers in cases of vacancies or any other impediment.

ART. 455. Lawyers appointed as substitutes shall have a right to the same benefits that are granted to substitute associate justices.

The same rights shall be enjoyed by the *fiscales* of municipal courts or courts of justices of the peace who are lawyers.

CHAPTER XI.

UNITY AND DEPENDENCE OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 456. In order to maintain the unity and dependence of the department of public prosecution, the *fiscales* of territorial audiencias shall have the power of inspection over each and all the *fiscales* of the criminal audiencias of the respective territory, for which purpose the latter shall submit to them within the first fifteen days of the month of May

of each year a memorial on the administration of justice in criminal matters in the audiencia of their circumscription; and the *fiscales* of territorial audiencias on said reports shall make such observations as they deem proper to the *fiscales* of criminal audiencias submitting said reports, and shall give account of this action to the *fiscal* of the supreme court, submitting to him another memorial during the first fifteen days of July.

During the judicial year, the *fiscales* of territorial audiencias may likewise request of those of criminal audiencias the data and information they may deem proper, and adopt appropriate measures in order to maintain the unity of jurisprudence, bringing all matters to the knowledge of the *fiscal* of the supreme court.

ART. 457. The *fiscal* of the supreme court is the chief of the department of public prosecution in the entire Monarchy.

The *fiscales* of territorial audiencias are chiefs of the department of public prosecution in their respective territory; but in criminal trials they shall only exercise the duties of their office before the criminal chamber of the respective territorial audiencia or before the same audiencia *in banc*, when the latter resolves itself into a chamber of justice.

The *fiscales* of criminal audiencias are chiefs of officers representing the department of public prosecution in municipal courts.

The *fiscal* of the supreme court shall have disciplinary jurisdiction over all the officers of the department of public prosecution.

The *fiscales* of territorial audiencias shall have disciplinary jurisdiction over those serving under their immediate orders and over the *fiscales* of criminal audiencias.

The latter over their auxiliary officers and over the *fiscales* of municipal courts in their province or circumscription.

Officers sentenced to a punishment by the *fiscales* of territorial audiencias or by those of criminal audiencias, may enter an appeal to the *fiscal* of the supreme court, and, as a last resort, to the Secretary for the colonies.

Officers sentenced to a punishment by the *fiscal* of the supreme court may appeal only to the said secretary.

ART. 458. As a consequence of the provisions of the foregoing article every *fiscal:*

1. Shall report to his immediate superior the crimes and offenses of which he has knowledge brought either at the instigation of the aggrieved party, or *ex officio*, or at his request. He shall do this in the time and manner prescribed by the laws, regulations, or by the rulings of his hierarchical superiors.

2. Shall conform to the instructions communicated to him by his hierarchical superiors in matters referring to duties of the department of public prosecution.

3. Shall consult his immediate hierarchical superiors, whenever such

action is necessary or advisable on account of the gravity of the matter, the difficulty of the case, or for any other reason.

4. Shall respectfully submit to his hierarchical superiors such observations as he thinks advisable, relating to the orders and instructions which he considers contrary to law, or which, on account of erroneous construction or any other reason, are inadmissible; he shall not, however, deviate from said orders and instructions until he receives an order to this effect from his superior.

5. Shall enter in the proper time and form, when not instructed to the contrary, appeals proper in matters in which he takes part, without prejudice to what his superior may decide as to their prosecution.

ART. 459. For the execution of the provisions of the two last numbers of the preceding article the superior, in accepting observations submitted by his subordinate, when he finds said observations legal and well taken, shall modify or countermand the orders and instructions which he himself may have issued.

In case said orders have come from another hierarchical superior, the superior referred to in the preceding paragraph shall bring said observations to the knowledge of the former, giving at the same time his own information, which he considers proper, in order that the matter may be decided in a proper manner.

When the orders and instructions have been given by the Government he shall report to it in order that the latter may decide on the matter.

ART. 460. When the superior does not consider the observations submitted by his subordinate as legal or well taken, he shall give him such instructions as he deems fit; and if he thinks such action advisable, he may appoint another of his subordinates to substitute him in the dispatch of the affairs.

CHAPTER XII.

DISCIPLINARY PUNISHMENT OF OFFICERS OF THE DEPARTMENT OF PUBLIC PROSECUTION.

ART. 461. In cases which, according to article 389, the disciplinary punishment of judges and associate justices is proper, it may also give occasion to disciplinary punishment of officers of the department of public prosecution.

ART. 462. The disciplinary penalties that shall be imposed on officers of the department of public prosecution shall be the ones fixed in article 368 for judges and associate justices.

ART. 463. The disciplinary penalties may be imposed after examining the officers concerned—

By the *fiscal* of the supreme court on all officers of the department of public prosecution.

By *fiscales* of audiencias on the officers serving under their immediate orders and on those of municipal courts or courts of justices of the peace and courts of first instance and examination.

ART. 464. From the disciplinary penalties imposed by *fiscales* of audiencias an appeal lies to the *fiscal* of the supreme court.

From the penalties imposed by the *fiscal* of the supreme court, either directly or by confirming, modifying, or revoking the penalties imposed by *fiscales* of audiencias, an appeal lies only to the colonial department.

ART. 465. There shall be no further appeal from the decisions of the colonial department.

TITLE XVII.

ATTORNEYS AND SOLICITORS.

CHAPTER I.

PROVISIONS COMMON TO ATTORNEYS AND SOLICITORS.

ART. 466. In towns which have territorial audiencias there shall be an association of attorneys (*colegio de abogados*) and an association of solicitors (*colegio de procuradores*), the principal object of which shall be the equal distribution of duties among those practicing in the courts of the locality, the good order of the respective corporation, and the decorum, fellowship, and discipline of the members.

ART. 467. Associations of attorneys and solicitors may also be established:

In the capitals of provinces where there is no territorial audiencia.

In towns in which there are 20 practicing solicitors or attorneys.

ART. 468. For eligibility to membership of the association of attorneys, those shall be considered as residents who, without staying in the town, reside and practice their profession within a radius of two leagues, provided that said attorneys agree to share with other members in due proportion the duties imposed upon them.

This rule does not include solicitors who must necessarily reside where the association is situated.

ART. 469. The membership of these associations shall be unlimited, and all candidates requesting admission shall be admitted, provided they prove that they possess the legal capacity prescribed by this decree-law for practicing the respective profession.

ART. 470. The by-laws of the associations of solicitors and attorneys shall establish their organization and management, the conditions of admission, the relations of members with the association and with courts, the obligations of the former, and the disciplinary penalties which may be incurred in matters not appertaining to the disciplinary jurisdiction of inferior and superior courts.

ART. 471. No person can practice the profession of attorney and that of solicitor at the same time.

The person who, after practicing one of said professions, selects the other shall cease to practice the former, and shall be dropped from the list of the respective association.

ART. 472. In the towns that have associations of attorneys or solicitors these professions can be practiced only by those who are members of said associations and have offices in the said towns.

Persons who do not have the necessary qualifications for the profession of attorneys and of solicitors can not be admitted as members of the associations.

ART. 473. Attorneys and solicitors shall be obliged to defend the poor free of charge, the conditions established in this decree-law being observed, in order that this obligation be not distributed unequally.

ART. 474. The governing boards of associations of attorneys and solicitors shall respectively establish such rules as they consider most just for turns in distribution of actions and causes of indigents, preserving the strictest possible equality.

The deans of the associations shall make appointments in conformity with said rules.

ART. 475. In towns that are seats of judicial subdistricts, in which there are no associations of attorneys, the secretary of the court of first instance and examination, under the supervision of the judge, shall make the distribution of actions and causes of indigents among the solicitors and attorneys, observing the strictest possible equality.

ART. 476. Where there is no association of solicitors or attorneys, it shall be necessary in order to practice these professions:

1. To possess the qualifications required therefor by this decree-law.
2. To belong to or be a resident of the town in which the law office is to be opened, and in the town of the residence of the court at which he practices the profession of solicitor.
3. To register in the inferior or superior court as a practicing attorney.
4. To pay the tax of industrial subsidy.

ART. 477. Solicitors and attorneys before beginning the practice of their profession shall take an oath to observe the constitution of the Monarchy, to be faithful to the King, and to carry out strictly and loyally all the obligations imposed on them by the laws and provisions of regulations.

ART. 478. The oath referred to in the preceding article shall be taken:

In towns where there is a territorial audiencia, before the chambers of administration of the same.

Where there is a criminal audiencia, before the same.

Where there is no criminal audiencia, before a judge of first instance and examination, if there be any, and if not, before a municipal judge.

ART. 479. Attorneys and solicitors shall be subject to the disciplinary jurisdiction of courts in the terms fixed by this decree-law.

ART. 480. Attorneys desiring to practice their profession in the colonial provinces and possessions shall present their degrees duly legalized or accompanied with a certificate of identity issued by the colonial department.

CHAPTER II.

PRACTICING ATTORNEYS.

ART. 481. The following are the requirements for practicing the legal profession:

1. To be at least 21 years of age.
2. To be a licentiate at law.
3. Not to have been prosecuted criminally.
4. Not to have been sentenced to corporeal punishment, or to have been exonerated therefrom.

ART. 482. The following persons can not practice the legal profession:

1. Persons discharging judicial duties or the duties of the department of public prosecution.

From this rule are excepted municipal judges or justices of the peace, and *fiscales* of municipal courts or courts of justices of the peace.

2. Persons filling offices in the service of the general administration of the State.
3. Auxiliary officers and employees of courts.

ART. 483. Notwithstanding the provisions of articles 472 and 476, lawyers who are not registered in the associations as having law offices, or in the inferior or superior courts to practice law, but who possess the qualifications specified in article 481, may defend either in writing or orally their own civil matters or criminal cases, and those of their relatives within the fourth degree of consanguinity or second of affinity.

In these cases, wherever there is an association of attorneys, they shall be qualified by its dean. Where there is none, they shall present proofs of their being attorneys and of their relationship, in a proper case, to the judge or court before whom or in which they are to act in defense, and said judge or court shall grant them their authorization.

ART. 484. Attorneys of an association in a capital of an audiencia may act in defense before the ordinary and extraordinary chambers of the same in whatever towns said chambers are convened.

ART. 485. Attorneys who shall act in defense of indigents can not excuse themselves from this obligation in criminal cases without personal and justifiable reasons, which shall be ruled upon by Deans of associations, where there are any, according to their good judgment, and in their absence by the judge or courts before which said defense should be made.

ART. 486. Attorneys shall appear before courts in the dress of the profession, which shall be black, with a cap and gown, of the same kind as those of judges and associate justices, and without any other distinctive mark whenever they attend solemn acts and hearings of inferior or superior courts.

CHAPTER III.

SOLICITORS.

ART. 487. In order to be a solicitor, it is necessary:

1. To prove an expert knowledge in the order and procedure of trials and in the obligations imposed upon their profession by law.

This qualification shall be proved in the manner established in the regulations.

From this formality are excepted those who are attorneys or who have completed the studies and obtained the qualification required for the office of notary.

2. To possess the qualifications established for attorneys in numbers 1, 3, and 4, of article 481.

3. In cases of persons who shall select the profession hereafter, by virtue of this decree-law, to constitute as a guaranty, a deposit in specie or in paper currency of the State, at the rate of the official quotation to the amount fixed below:

Five thousand pesos in Habana.

One thousand five hundred pesos in other cities having a territorial audiencia.

One thousand pesos in localities having a criminal audiencia.

Five hundred pesos in localities having a court of examination or of first instance.

Two hundred in other localities.

This security may be given on real estate of three times the value fixed in the preceding scale.

In every case the guaranty may consist of one-fifth of the sums fixed, adding to it the title of an alienated office of that class while it shall not have reverted to the State.

ART. 488. The bonds of solicitors shall serve as security for fines imposed upon them, for money received from their clients for judicial costs, or in any other civil, criminal, or disciplinary liability arising in the practice of their profession.

ART. 489. Whenever the bond is reduced for any of the causes expressed above, it must be completed by the solicitor. If he fails to complete it within two months, he shall be suspended from his office.

ART. 490. Whenever a solicitor ceases to perform his duties for any reason whatsoever, an announcement shall be published in the official newspaper of the province in which said solicitor had his office and in the official newspapers of the town, should there be any, in order that any claims against him may be made within the period of six months.

After said period has elasped, the deposit shall be returned to the solicitor if there are no claims.

If just claims have been made within the proper time the creditors shall receive from the deposit what is due them.

ART. 491. Solicitors of the same town shall replace one another in cases of leave of absence, sickness, or any other legitimate impediment.

In towns not having a number of solicitors sufficient to represent the parties or to replace one solicitor by another, the judicial authority may appoint temporarily a person who, besides the necessary conditions of age and morality, possesses knowledge enabling him to act as solicitor, it being understood that this appointment shall always be special and for a certain case.

ART. 492. Solicitors are absolutely forbidden to perform auxiliary duties in the dependencies of inferior or of superior courts.

TITLE XVIII.

RECESSES, LEAVES, AND COMMISSIONS OF THE SERVICE.

CHAPTER I.

DAYS ON WHICH COURTS DO NOT HOLD SESSIONS.

ART. 493. Superior and inferior courts shall not hold sessions:

1. On whole holidays.
2. On the King's day, and on those of the Queen, the Regent of the Realm, and the Prince of Asturias.
3. On Thursday and Friday of Holy Week.
4. On national holidays.

ART. 494. Without prejudice to the provisions of the preceding article, the days specified therein shall be juridical days for the institution of preliminary proceedings in criminal causes, without being specially made such, and may be made such for any other urgent, civil, or criminal proceedings.

ART. 495. For the purposes of the preceding article, such proceedings shall be considered as urgent the postponement of which may, in the judgment of the judge or court, cause great damage to the defendants, the litigants, or to the good administration of justice.

CHAPTER II.

LEAVES.

ART. 496. Municipal judges of the Antilles and justices of the peace of the Philippines may absent themselves for eight days or less from the municipal territory in which they reside, leaving their substitute in charge of their offices, and informing the judge of first instance of the subdistrict of the fact.

In order to absent themselves for more than eight and less than thirty days they must obtain, in writing, leave from the judge of first instance of the subdistrict, and for a period of from thirty to ninety days from the presiding judge of the audiencia.

ART. 497. In none of the cases referred to in the two preceding articles may municipal judges or justices of the peace absent themselves

from the municipal territory in which they perform their duties until the respective substitute takes charge of his office.

ART. 498. Neither judges of examination nor of first instance may absent themselves without leave from the districts in which they render service; nor associate justices of whatsoever rank from localities where the courts to which they belong are situated.

From the provisions of the preceding paragraph shall be excepted those who are absent in order to perform their duties or to take some legal steps in the administration of justice.

ART. 499. No leave shall be granted except upon the request of an employee, passed upon by his immediate superior. If it is made on account of ill health, it must be duly proven. If it is made on account of personal matters, the immediate superior, in passing upon it, shall state whether the granting of the leave would cause injury to the public service.

It shall be an obligation to grant leaves when the person interested in soliciting the same has complied with the requirements of the preceding paragraph.

ART. 500. The granting of leaves shall be made in conformity with the following rules:

1. It shall be an indispensable condition for requesting leaves to have remained without interruption in active service for three consecutive years in any of the colonial provinces.

2. The maximum period of leaves, which can not be extended, shall be regulated as follows:

Six months for officers of the Philippine Islands and four for those of the islands of Cuba and Puerto Rico, who have fulfilled the conditions established in the preceding rule; nine months and six months, respectively, for officers of the said islands, if they have remained in the condition established by rule 1 for six consecutive years; twelve months and eight months, respectively, for officers of said islands, if their uninterrupted active service has reached the period of ten years.

3. Making use of leaves, on whatever condition they may have been granted, deprives the officer of the privilege of requesting another until the conditions which, according to the case, are specified in rules 1 and 2 shall have been again fulfilled.

4. Leaves shall be requested by the officers concerned of the colonial department, in due form and through the proper channel.

5. Only in case of serious sickness, duly proved, and which endangers the life of the officers interested, may governors-general grant leaves for Europe, for half the time, respectively, fixed in rule 2, after a proper investigation, instituted by the immediate superiors of the officers.

6. Both in making investigations to prove the causes for which leave is asked and in the payment of salary during the said leave, according to whether it has been granted on account of sickness or for personal matters, there shall be taken into account the provisions of the preceding rule, and further that it is obligatory to grant every leave in

which the officer requesting it has proved his ill health, and that such officer shall draw only the personal salary assigned to his office from the day on which he ceases to perform his duties until the day on which he resumes them.

ART. 501. Leaves for any point of Asia or America not included in the colonial provinces shall be granted by governors-general for the period of forty-five days, an extension being limited to twenty-two days more, in cases of sickness that has been proved, the officers on such leaves drawing the pay and the extra pay corresponding to their office.

When leaves are granted for personal matters, they shall in no case exceed forty-five days, during which the officer on leave shall not draw any pay whatsoever.

ART. 502. Leaves for the interior of the islands in which the officers of the judicial and of the public prosecution services fill offices shall be granted by the proper superior authorities in conformity with the following rules:

1. Employees of the said services can not absent themselves from the town in which they perform their special duties without leave granted by the proper authority. An officer absenting himself without leave shall be considered as resigning his office, and shall be declared suspended, this provision being without prejudice to the other liabilities that may arise.

2. Leaves must be asked for in writing and through the immediate superior. If they are made on account of ill health, it is necessary to justify the request by a medical certificate.

If the justification presented by the petitioner appears insufficient, in the opinion of his chief, the latter may order that they be amplified.

In a petition for leave the employee presenting it shall state the leaves he has enjoyed during the three preceding years.

3. Immediate superiors, in passing upon requests for leaves, shall inform themselves as to the necessity for said leaves to employees, and as to the possibility of granting them without prejudice to the service.

4. Leaves in case of sickness shall be granted with full salary for one month only, and with half salary for fifteen days more; those granted for other reasons shall be without salary.

5. Leaves taken by employees shall be noted in their record of service and in their personal record.

6. An employee who has obtained leave during three consecutive years shall not obtain another one during the next three years.

ART. 503. A leave granted an employee shall be null if, before making use of it, the employee is transferred to another office, a new order being required in order that he may make use of the same in his new position.

ART. 504. A report shall be made to the colonial department on every leave granted to said employees in order that a memorandum of it may be made in the respective personal record

ART. 505. The period of residence referred to in rules 1 and 2 of article 500 shall not be considered as interrupted by obtaining leaves asked for by the interested party or by a voyage or residence in the Peninsula to which the officers are compelled, when by order of the Government they are transferred from the Philippine Islands to those of Cuba and Puerto Rico and *vice versa*.

ART. 506. Authorization of residence of colonial officers after the periods of leaves fixed by the regulations have elapsed is absolutely prohibited.

ART. 507. Leaves for the Peninsula shall not be granted at the same time to two associate justices of the same court in case of a criminal audiencia, or to more than one-third of the associate justices in case of a territorial audiencia, including that of Habana. Leaves, likewise, shall not be taken at the same time by two officers of the department of public prosecution belonging to the same superior court or by the judge and the *promotor* of the same district. Only in the audiencia of Habana may two officers of the department of public prosecution make use of leaves for the Peninsula at the same time.

In granting leaves in the cases referred to above, preference shall be given to the officer who shall have served a longer period without taking a leave.

ART. 508. When officers who have obtained leaves make a direct voyage for the Peninsula or to any other point of Europe, Asia, or America, the day of landing shall be considered as the date on which their leave begins, which they shall prove in a certificate, issued by the captain of a port or by the Spanish consul, according as to whether the point of destination of the voyage is in the Peninsula or outside thereof, respectively.

If the voyage is not direct, the time of the leave shall be counted from the date of embarkation from the colonial province in which the employee resides.

ART. 509. To fulfill the obligations imposed upon an officer on leave he shall conform to the following rules:

1. Employees making use of a leave must have their return embarkation certified to before the time allowed for the leave has expired. This shall be effected by means of a certification of the captain of the port of embarkation from the Peninsula or of the Spanish consul of the place abroad from which they begin their journey.

They shall likewise prove their arrival at the point of their office by a certificate of the captain of the port.

Both certifications shall be made in duplicate. One of these they shall send to the colonial department and the other to the intendant or director of the treasury of the province in which they serve.

2. Any voluntary detention or interruption of the return voyage after having made use of a leave shall cause the forfeiture of the office.

3. Whenever, at the expiration of the time allowed for a leave, the employees to whom said leaves have been granted do not have their

reembarkation for the point at which they hold offices certified, they shall be declared suspended, counting from the date of expiration of the term of the leave.

4. Leaves shall become void which are not made use of within two months after having been communicated to the persons interested if said leaves have been granted for Europe and between Asia and America, and within one month if issued for points on the same or neighboring islands, whether of the Antilles or of the Philippine archipelago.

Those granted to employees obtaining new offices shall likewise become void, without regard as to whether said employees are making use of the same or not.

5. Transportation expenses shall not be paid under any circumstances to employees on leave, no matter what is the cause thereof or to what point the employee on leave may go.

CHAPTER III.

COMMISSIONS.

ART. 510. Commissions for service in the Peninsula shall be conferred only on account of extraordinary and urgent needs of the State, shown in a written communication of the higher authorities of the colonies, if the granting of the same emanates from these authorities, or in a royal order if they are determined by the colonial department.

ART. 511. Said concessions can only be conferred for the period of four months, which can not be extended, counting from the time of landing at a port of the Peninsula after a direct voyage from the place of employment, to the presiding judges and *fiscales* of territorial audiencias, with a right during the entire duration of the commission to the personal pay of the office which they fill regularly and one-half in addition, and to the traveling expenses both ways, duly justified.

ART. 512. Officers coming to the Peninsula from the said provinces in commission of the service shall prove immediately on presenting themselves at the colonial department that they have made a direct voyage. If they should not have done so, they shall lose the right to transportation at the expense of the State and to the emoluments allowed them on account of their extraordinary duties, and shall be obliged to refund to the public treasury the sum advanced to them on either account. In such case they shall be obliged to return to the place of the office which they regularly fill within the period of thirty days, which can not be extended, counted from the date of their landing, during which period they shall have no right to any pay.

ART. 513. Extraordinary commissions for the service may also be conferred in special circumstances for places within the colonial province in which the employee who is given the same fills his office, and if said employee must leave the place of his residence he shall have a right to the pay, extra pay, and in addition one-half of the total pay

during the duration of the commission, which can never exceed three months. They shall also be allowed traveling expenses both ways.

ART. 514. In the future no addition of the officers of the colonial possessions to the colonial department or to any other office of the administration of the Peninsula shall be decreed.

ART. 515. Every officer coming to the Peninsula otherwise than under the conditions established in this decree-law, on leave or in commission for the service, even if either has been granted through an error or the negligence of his hierarchical superiors, shall be discharged from the service. The order of discharge shall be retroactive to the day on which said officer ceased to perform the regular duties of his office.

ART. 516. Notwithstanding the provisions of article 514, officers of the judicial and the public prosecution services may be detailed to the codification commission of the colonial provinces for the period of four months at the utmost, which can not be extended. To said details only such officers can be appointed who actually hold the office of associate justice of a territorial audiencia, in the proportion of one officer for each of the same and two officers for that of Habana. The number of officers thus detailed can not exceed three.

ART. 517. The period of four months shall be counted from the date of landing in the Peninsula for the officers who obtain a commission while residing in the colonial provinces at the time when the same is conferred, and from the date of the royal order conferring the commission for those residing in the Peninsula at the time thereof.

ART. 518. The officer who, in any of the cases referred to in this chapter, has not had his embarkation certified to within the period for which the commission is conferred, shall be considered as resigning his office and shall be declared suspended.

ART. 519. The provisions of this title are hereby extended to the officers of the department of public prosecution.

FINAL PROVISION.

All legal provisions conflicting with those of this decree-law are hereby repealed.

Approved by Her Majesty:

FABIÉ.

MADRID, *January 5, 1891.*

APPENDICES.

APPENDICES.

Royal decree of April 3, 1881, declaring the termination of the application of all the temporary provisions of the additional law to the organic law on judicial power.[1]

STATEMENT.

SIR: Few subjects have been the object of such varying laws as the appointment and promotion of the officers of the administration of justice. The noble purpose to give due consideration to legitimate aspirations and interests, together with the great changes in the organization of courts, has produced such a complication of series of succession, categories, assimilations of rank, entrance into the service, and provisional powers that it is very difficult, even with the best intentions, now to proceed in so delicate a matter without offending legitimate hopes, and even rights that should be respected. Nevertheless, it is necessary to devise a remedy for a state of things which has been disturbing, for reasons lying beyond the control of anyone, the personnel of so important a branch of service, unexpected promotions being given to some, others being forced to wait, while, on the other hand, persons have been taken into the service who, according to the laws, could not hope for admission.

Reforms of so radical a type as would conform with the desires of the undersigned secretary can not be proposed by him to Your Majesty at the present time, as he has too much respect for matters which, directly or indirectly, are of a judicial character to interfere with them to any extent without a previous decision of the Parliament; but one painful, though brief, experience has demonstrated to him the imperative necessity of regulating without delay that organism which, more than any other branch of the service, demands order and respect, seniority and hierarchy, modest, but certain, hopes of reward for diligence in work and the removal of personal influence, and which, unfortunately for some time, has been suffering from defects diametrically opposed to such conditions.

The only thing which can for the present be effected, and which is really of the greatest urgency, is to limit arbitrary ministerial decisions, which seldom prove beneficial in countries which, like our own, have a political parliamentary government, united with a social democratic organization, and to secure this it is probably more important, instead of elaborating new substantive precepts, to seek a method of procedure which will insure a vigorous fulfillment of the precepts which have already been promulgated.

It is sad to say it, but in this, as in the other branches of our administrative legistration, the perfection of the written law contrasts with the difficulties of long-sustained and efficacious practice. Thus the

[1] All the articles of this decree are still in force except articles 7 and 8, which were repealed by royal decree of April 8, 1886; consequently it must be observed, taking into consideration the provisions of subsequent decisions concerning the various series of succession.

artistic and complicated provisions concerning series of succession of the organic law of 1870, and of the additional law of 1882, satisfy the most exacting spirit by their variety and method; but the provisions on the bureau of personnel seem never to have acquired an actual application, certainly not by the fault of the governments, but for want of regulations to carry these precepts into effect. This consideration awakens in the undersigned secretary a fear that he may not be more successful in the future; but he has been moved by the desire to make the greatest endeavor in seeking additional formulas and guaranties for carrying into effect the law which is in force, and the provisions of which are more ample in what refers to the freedom of ministerial powers in matters of promotions and appointments than the criterion of the present Government would permit, but which would effect a real progress under the sole condition of their being actually carried into effect.

To this end, the provisions of the additional law relating to entrance and promotion being in the essence respected, the undersigned secretary having believed that his right to change by a decree the series of succession established in favor of certain classes is at least doubtful, the temporary provisions, the raison d'être of which has disappeared, shall be without force; a minimum limit of two years is fixed as a prerequisite to promotion from one category to another; the Government renounces the freedom given to it by the law to select for promotion officers of the immediate list, no matter what position said officers may occupy; and the observance of the series of succession is regulated by means of registry books accessible to those interested, open to the public (which is the highest guaranty of modern organizations), whenever such publicity is advisable, for the defense of a right or the denouncement of an abuse or negligence; all guarantied by real competitions for filling the positions of a social importance not lower than that of professors or registers of property, and with administrative and litigative appeals which demand from persons who rashly persist in an error, or in the violation of a right which should be respected, a moderate liability, which for that very reason is apparently true and efficacious.

Much will be left for further work, even after securing by these means the strict fulfillment of the law in force. But it has already been said by one of our statesmen of the seventeenth century "that there is no high aim without much labor," and the undersigned secretary must bear this saying in mind in order not to fall into the error of attractive but ephemeral improvisations; and when the entrance and promotions shall have been regulated in law and in practice, and when the consequences of past modifications shall have vanished, greater and bolder steps may safely be undertaken in the great work of making the judicial organism as vigorous as is demanded by the institutions of a country having parliamentary rule.

At the royal feet of Your Majesty.

FRANCISCO SILVELA.

MADRID, *April 3, 1884.*

ROYAL DECREE.

In conformity with the suggestion of the secretary of grace and justice, with the approval of the council of secretaries, I decree the following:

ART. 1. The application of all the temporary provisions of the additional law to the organic law on judicial power of October 14, 1882,

is hereby declared at an end, and therefore the other precepts of the said law remain in force and must be rigorously observed.

ART. 2. A promotion can not be granted to any officer in the judicial service who has not filled for at least two years an office of the class next lower in the respective list.

In default of an officer filling for two years the office in the next lower class in the list, the officer occupying the first place on the graded list shall be promoted.

ART. 3. In the four series of succession fixed in Arts. 41, 42, 43, 44, and 45 of the said additional law, the power which is granted the Government to appoint officers of the class next lower, whatever may be their number on the graded scale, shall be reduced to those who are included in the first two-thirds of their respective grade.

ART. 4. To procure due guaranty and regularity for the series of succession established by the additional law, there shall be kept in the bureau of personnel of audiencias and inferior courts of this department the following books corresponding to the order of promotion established in the said law:

1. For the vacancies of inferior courts of the entrance category.
2. For the vacancies of inferior courts of the promotion category and of the public prosecutors (*abogacias fiscales*) of criminal audiencias.
3. For the vacancies of the inferior courts of the final category, of the public prosecutors (*abogacias fiscales*) of territorial audiencias, and of the *tenientes fiscales* of criminal audiencias.
4. For the vacancies of the associate justices of criminal audiencias, *tenientes fiscales* of territorial audiencias, and *abogados fiscales* of the audiencia of Madrid.
5. For the vacancies of the presiding judges and *fiscales* of criminal audiencias, and of associate justices of territorial audiencias, and of the judges of Madrid.
6. For the vacancies of presiding judges of chambers of territorial audiencias, *fiscales*, associate justices of the territorial audiencia of Madrid, *tenientes fiscales* of the same, or *abogados fiscales* of the supreme court.
7. For the vacancies occurring in the office of associate justices of the supreme court.

ART. 5. In these books, which shall be kept and rubricated by the chief of personnel under the immediate direction of the assistant secretary of this department, there shall be recorded the appointments made in each group of those established by the law, with the observance of the series of succession in the order fixed by the additional law, which shall be counted for vacancies occurring from the date of the publication of this decree in the *Gaceta de Madrid*. These books shall be open to the active and suspended officers of the judicial service who may request to see them at the assistant secretary's office of the department, and said officers shall be given, upon request, certified extracts from these books, at their expense.

ART. 6. The officers who believe themselves to have been prejudiced by an appointment made with an improper modification of the series of succession, may appeal to the secretary through administrative channels. In such an appeal a hearing must be given to the section of grace and justice of the council of state, and legal steps of a litigative character may be brought against the decision of the secretary.

If the litigation shall have demonstrated an improper modification of the series of succession and the illegality of the appointment, the costs of the litigation shall be charged personally to the secretary who may

have disregarded the administrative complaint, if the decision of the council of state was not observed.

ART. 7. All the vacancies of the judicial service shall be announced for the purpose of filling them in the *Gaceta de Madrid* as soon as they are officially communicated to the department, and those desiring to be appointed to fill said vacancies shall send within the period of twenty days, counting from the date of the publication of the announcement, their written petitions, accompanied by documents proving their legal eligibility. The bureau of the department shall classify them and shall make a list, making a succinct statement of the proceedings, showing the names of the applicants and their merits, which shall be published with the appointment.

ART. 8. If in any of the series of succession no officers request the promotion due them, that series of succession shall be passed over, a memorandum to that effect being entered in the proper book, and the vacancy being filled from the series of succession next in order.

ART. 9. The duties to be discharged in vacant offices while the steps for filling said offices are in progress may be discharged through a commission for service, which may be intrusted to officers of the same or the next lower category if the circumstances should make it advisable that they should be performed by the person who ordinarily should do so temporarily.

Given at the Palace on April 3, 1884.

ALFONSO.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

(*Gaceta* of April 4.)

Royal order of March 14, 1885, for taking possession of offices, duration and postponement thereof, and transfers of judicial officers.

The attention of this department has been called to the repeated petitions of officers in the judicial and public prosecution service who have taken part in competitions, asking for prolongation of the period fixed by law for taking possession for the purpose of performing their duties and requesting at the same time transfers to positions other than those which must be filled and to which said officers have solicited appointment; as well as to the fact that similar requests of postponement of taking possession are made by many officers who in compliance with their wishes have been transferred without sufficient grounds in either case, except in cases of duly proven sickness that can not be foreseen by said officers before taking part in the competition for appointment or before asking for a transfer. The granting of such postponements, besides necessitating a long temporary filling of vacancies, on account of which the offices remain vacant during the time of competitive examination, as well as during the time of transfer to take possession of the office, causes serious delay in the transaction of business and disturbs the good administration of justice, because the regular incumbents are not performing their duties. The above applies especially to courts of first instance and examination, because frequently the municipal judge who should replace the regular officer in the exercise of his jurisdiction is not a lawyer—a circumstance which again proves to be the cause of a further delay and impediment to the transaction of business. With the object of remedying these evils,

removing the inconveniences produced thereby in the ordinary and normal routine of courts, His Majesty the King (whom God preserve) has decreed the following:

1. Officers who in virtue of a competition have been promoted to the vacancies which they desired to fill must take possession of their offices within the period fixed for the purpose in the provisional law on judicial power, which can not be extended, except in case of sickness duly proven. If said period has elapsed, and the officers in question have not taken possession of their offices, it shall be presumed that said officers renounce the promotion, and another officer shall be selected from among those who have applied to fill the same vacancies and have taken part in the same competitive examinations while the former shall remain in the offices they previously held, if their filling has not already been announced, in which latter case they shall be given another office of the same class and category.

2. A promoted officer can not request a transfer until at least one year has elapsed from the date of his promotion, except in cases of incompatibility, when a change of place with another officer should be solicited by means of a petition, or in cases when the officer in question is prevented by serious causes from remaining in the place in which he performs his duties.

3. An extension of the period for taking possession of offices shall not be granted to the officers who have been transferred at their own request, except in cases of sickness duly proven, a statement concerning which must appear in the petition. Said petition shall be directed through the proper channels, and therein the petitioner shall comply with the other requirements which for petitions for leaves and their extensions are fixed by the royal order of July 24, 1878, issued by the treasury department for carrying into effect the provisions of article 43 of the budget law of said year.

4. Every request for transfer shall be made in the form of a petition directed through the respective presiding judges of territorial audiencias, in which there shall be stated the reasons for the request, for which purpose there shall be kept in this department a registry in which a memorandum of said petitions shall be made.

I communicate this to you for your information and that of the officers of that judicial territory, and for other purposes in connection therewith.

May God preserve you many years.

SILVELA.

MADRID, *March 14, 1885.*

To the Presiding Judge and the Fiscal of the Audiencia of ———.

(*Gaceta* of March 18.)

Law of August 19, 1885, on the unification of the judicial and the public prosecution services of the Peninsula and the colonies.

Don Alfonso XII, by the grace of God, constitutional King of Spain.

To all who shall hear or see these presents:

Be it known that the Cortes have decreed and we have sanctioned the following:

ART. 1. The judicial and public prosecution services of the Peninsula and the colonies are hereby united, and equal rights are granted to the officers of the same within their respective categories, subject to the laws in force in so far as they are not modified by the present one.

ART. 2. For the fulfillment of the provisions of the preceding article the following grades are established in the judicial service:

1. The presiding judge of the supreme court.
2. The presiding judges of the chambers of the same.
3. The associate justices of same court.
4. The presiding judge and the presiding judges of chambers of the audiencias of Madrid and Habana.
5. The associate justices of the audiencias of Madrid and Habana and the presiding judge and the presiding judges of chambers of territorial audiencias.
6. The associate justices of territorial audiencias, presiding judges of criminal audiencias, and the judges of first instance of Madrid and Habana.
7. The associate justices of criminal audiencias.
8. The judges of first instance of the final category.
9. The judges of the promotion category.
10. The judges of the entrance category.

ART. 3. The hierarchical order of the department of public prosecution shall be as follows:

1. The *fiscal* of the supreme court.
2. The *teniente fiscal* of the same and the *fiscales* of the audiencias of Madrid and Habana.
3. The *abogados fiscales* of the supreme court, the *tenientes fiscales* of the audiencias of Madrid and Habana, and the *fiscales* of territorial audiencias.
4. The *fiscales* of criminal audiencias.
5. The *tenientes fiscales* of territorial audiencias and the *abogados fiscales* of the audiencias of Madrid and Habana.
6. The *abogados fiscales* of territorial audiencias, the *tenientes fiscales* of criminal audiencias, and the *promotores fiscales* of the audiencia of Habana.
7. The *abogados fiscales* of criminal audiencias and the *promotores* of the final category serving in the colonies.
8. The *promotores* of the promotion category serving in the colonies.
9. The *promotores* of the entrance category serving in the colonies.

ART. 4. The first grade in the public prosecution service is equivalent to the second grade in the judicial service; the second of the former to the fourth of the latter; the third of the former to the fifth of the latter; the fourth of the former to the sixth of the latter, and to that of the secretary of the supreme court; the fifth of the public prosecution to the seventh of the judicial; the sixth to the eighth, and to that of the secretaries of chamber and of administration of the audiencias of Madrid and Habana; the seventh of the former to the ninth of the latter and to that of secretaries of chamber and of administration of the territorial audiencia; the eighth to the tenth of the judicial service and to that of the secretaries of territorial audiencias, and the ninth to that of vice-secretaries.

ART. 5. The department of grace and justice shall arrange the general graded list within the period of three months, counting from the date of the promulgation of this law, in which there shall be included all the officers of the judicial service and of the department of public prosecution of the whole kingdom, in conformity with the provisions of the royal decree of September 27, 1878.

The department of the colonies shall forward to the department of grace and justice the necessary data in order that there may be included in the graded list the officers of the said services who fill offices or are on the list of suspended officers of America and Asia. It shall

likewise forward also within the first fifteen days of each year a statement of the changes occurring in the partial graded list which said department must make in its turn in order to make the proper corrections in the general one.

ART. 6. Entrance into the judicial service in the Peninsula shall take place as judge of the entrance category by means of a competitive examination, in conformity with the provisions of article 35 of the additional law to the provisional law or organization of the judicial power, and without prejudice to the power granted to the Government to name a fourth series of succession for those possessing the qualifications required by article 40 of the law above mentioned.

Until the present organization in the colonies is modified entrance into the service shall take place as *promotor* of the entrance category, the appointee being required to possess the qualifications prescribed in article 19 of the royal decree of September 20, 1875, excepting the power which in the provision in question and in the additional law is reserved to the Government. To the colonies there shall be extended the articles of the above-mentioned law that establish the series of succession for filling vacancies, including therein *promotores* and other judicial officers in their proper places according to the classification of article 4 of this law.

ART. 7. The secretaries of grace and justice and the colonial secretary, in conformity with the said series of succession and taking into account the organization of the superior courts of their respective departments, shall fill the vacancies that occur with officers dependent on said departments, and may appoint in the third and fourth series the officers who request transfer or promotion from one to the other. In order to aspire to the former the officers of the colonial department must have served four years in the colonies, or in the direction of grace and justice of the colonial department, and two years in the category. This last condition is required also of those serving in the Peninsula who request a transfer to the said provinces. For a promotion the officers of either department must possess the qualifications required by the law cited. Should duly qualified candidates be wanting, or should they not possess the qualifications required by law, appointments shall be made from among the officers selected from said series.

ART. 8. The places referred to in article 46 of the said additional law and included in the respective grades of articles 2 and 3 of the present law shall be filled in the manner prescribed by the former, one of each three vacancies occurring in the Peninsula or in the colonies being given to officers of the colonies or of the peninsula belonging to the classes specified in said articles, who must have served for two years in their category and must request the appointment.

ART. 9. The secretaries referred to above shall take into consideration, in filling the position referred to in articles 46, 47, and 48 of the said additional law, the seniority granted in the general graded list to the officers eligible for the positions in question, and the merits that commend them for the vacancies occurring in their respective departments.

ART. 10. For the purposes of article 50 of the additional law the associate justice of the greatest seniority of the audiencia of Habana is hereby granted the same privileges as are given by said article to the associate justice of the greatest seniority of the audiencia of Madrid.

ART. 11. In filling offices of secretaries of chamber and administration of the final category of the territorial audiencias of the Kingdom, and the offices of the secretary and the vice secretary of the supreme court, articles 54 and 55 of the said additional law shall be observed.

ART. 12. For the transfer or promotion of the officers referred to in this law from the Peninsula to the colonies, or *vice versa*, a request must be made by the officers themselves. Those of the colonies must also have to their credit four years of residence in said colonies and two years of service in the category, unless the appointment conforms with the succession by seniority.

The petitions shall be addressed to the secretary making the appointment, through the department in which the petitioner serves, who in passing upon the petition shall add a report of the career and memoranda concerning the officer in question and his record of service. The latter shall be published in the *Gaceta de Madrid*, together with the appointment, with a citation of the article of the law on which it is based.

ART. 13. The categories and privileges acquired in conformity with the provisions and laws in force granted to those holding the same shall be respected.

The officers who entered the service in the colonies without a competitive examination, subsequently to the date of the promulgation of the organic law on judicial power, shall be required to serve the time of service equivalent to that which the additional law on law practice fixes for lawyers for entering the respective category, before they can be transferred to the Peninsula, and two years more before they can be promoted.

ART. 14. The officers who are lawyers of the department of grace and justice, and those of the direction of grace and justice of the colonial department, shall preserve the category and position in the graded list that may have been granted them, when they have completed the length of service required to this effect of the officers of the same rank in the judicial and the public prosecution services. Those who hereafter enter either service can not aspire to the categories, and consequently can not be included in the graded list if they do not belong to the same, in which case their categories shall not be accepted as superior to that which they had and with which they entered the department. Those who shall hereafter enter the service in the direction of grace and justice in the same manner as the officers of that department can not be promoted without having completed the necessary time of service required for promotion in their respective category.

ART. 15. The provisions on incompatibility prescribed for judicial officers by article 111 of the organic law on judicial power shall be rigorously enforced in the colonies. From this provision shall be excepted, as long as the present organization in the Philippines is preserved, the judges of the Philippines who by virtue of their duties discharge other functions besides those of the judicial office, in conformity with the laws in force in said provinces.

The secretary of grace and justice and the secretary of the colonies shall see to the fulfillment of this law.

Therefore:

We command all superior courts, judges, chiefs, governors, and all other authorities, civil as well as military and ecclesiastical, of whatsoever class and rank, to observe and cause to be observed, fulfill and execute the present law in all its parts.

Given at San Ildefonso on August 19, 1885.

I, THE KING.

ANTONIO CÁNOVAS DEL CASTILLO,
President of the Council of Secretaries.

(*Gaceta*, August 22.)

Royal decree of September 9, 1885, issued for the compliance of the law of August 19 of the same year, unifying the judicial and the public prosecution services of the Peninsula and of the colonies.

For the due fulfillment of the provisions of the law on unification of the judicial and the public prosecution services of the colonies and of the Peninsula, dated August 19 of the current year, in matters referring to the department of the colonies, on the recommendation of the secretary of this branch of service, and in accord with the secretary of grace and justice, I decree the following:

ARTICLE 1. The series of appointments concerning inferior courts of the promotion category and other higher categories, which were established by my royal decree of the 29th of last May, shall be considered as substituted by those established by the law of October 14, 1882, additional to the organic law on judicial power, according to the provisions of article 6 of said law on unification, and by the provisions of the latter included in articles 7 and 8. In all other matters which do not oppose said law the said royal decree mentioned above shall remain in force.

ART. 2. The colonial department shall forward to the department of grace and justice the graded list of the personnel of its department, with the necessary notes, remarks, and facts which serve as proof, which should be necessary within the period of thirty days counted from the date of the promulgation of the law on unification above mentioned, in order to comply with the provisions of article 5 of the same, and said department shall likewise forward in the month of January of each year a statement of the changes which took place in the previous year. In either case the officers of the direction of grace and justice of the colonial department, who are lawyers, referred to in article 14 of the said law, shall be included in the category granted to them, with the proper notices concerning the length of service with which the officers referred to and the officers of the secretary's office of the department of grace and justice have to reach the seniority required for said categories.

ART. 3. In the single graded list and in its annual renewals a statement shall be made that said graded list has been drafted with the approval of the colonial secretary.

ART. 4. Claims made by officers of the colonial branch against the classification of their rights or category which appears in the graded list, shall be decided upon by the secretaries of grace and justice and of the colonies conjointly. Should there be a disagreement between the departments the decision shall be submitted to the council of secretaries.

ART. 5. The provisions of the present decree referring to the appointment of officers shall be in force from the date of the publication of the general graded list of the unified services in the *Gaceta de Madrid.* In the meanwhile the royal decree of April 12, 1875, and of May 29 of the current year shall be strictly observed in reference to filling offices.

ART. 6. Officers of the colonies and of the Peninsula, both active and suspended, and other persons who are eligible to the vacancies that occur, must request their appointment to said vacancies officially, according to the provisions of the last of the above-mentioned decrees.

Given at the Palace on September 9, 1885.

ALFONSO.

MANUEL AGUIRRE DE TEJADA,
Secretary of the Colonies.

(*Gaceta*, September 11.)

Royal decree of April 8, 1886, on the manner of filling vacancies in the judicial and the public prosecution services.

In conformity with the recommendation of the secretary of grace and justice, with the approval of the council of secretaries, I decree the following:

ART. 1. Article 7 of the royal decree of April 3, 1884, is hereby repealed.

Vacancies in the judical and public prosecution services shall be filled by the Government without a previous announcement in the *Gaceta*, in accordance with the provisions of the additional law to the law on judicial power of October 14, 1882, and other prescriptions of the royal decree above referred to.

ART. 2. In every appointment made in conformity with the provision of the preceding article there shall be stated the series of succession to which the filling of said vacancy corresponds, and the number occupied by the promoted officer in the graded list.

Said appointment shall be published in the *Gaceta* with the record of merits and services of the appointee.

ART. 3. All other provisions of the royal decree of April 3, 1884, shall remain in force.

Given at the Palace on April 8, 1886.

MARÍA CRISTINA.

MANUEL ALFONSO MARTINEZ,
Secretary of Grace and Justice.

(*Gaceta*, April 10.)

Royal decree of December 26, 1886, issued in compliance with article 5 of the law of August 19, 1885.

In view of the reasons given by the president of the council of secretaries, with the approval of the said council and of the section of state and grace and justice of the council of state, I decree the following:

ART. 1. The officers of the administration of justice in the colonial possessions shall appear in the general graded list provided for in article 5 of the law on unification of the judicial and the public prosecution services, with the seniority resulting from the date on which they took possession of their offices.

ART. 2. In conformity with article 50 of the additional law to the organic law on judicial power, the right of the associate justice of the greatest seniority of the audiencia of Madrid for promotion to the supreme court belongs solely to the officer who has actually served in said audiencia for the greatest number of years.

ART. 3. The officers assimilated to the judicial and the public prosecution services can not be included in the graded list until they possess the conditions required to obtain the corresponding category.

ART. 4. As a consequence of the provisions of the preceding article assimilated officers can not assume greater seniority than that resulting from the date on which said officers comply with the conditions required for the office that has been assimilated.

ART. 5. The officers included in articles 3 and 4 must prove to the department of grace and justice that they possess the qualifications required by the orders granting the assimilation in order that, after the

proper declaration, they may be included in the general graded list, in accordance with the provisions of article 4.

Given at the Palace on December 26, 1886.

MARÍA CRISTINA.

PRÁXEDES MATEO SAGASTA,
President of the Council of Secretaries.

(*Gaceta*, December 28.)

Royal decree of February 25, 1887, recognizing the codification commission of the colonial provinces.

In view of the reasons given to me by the secretary of the colonies, I decree the following:

ART. 1. The codification commission of the colonies is hereby reorganized as follows: The number of members shall be 14, the director-general of grace and justice of the colonial department being one of them.

ART. 2. The members of the commission must be lawyers residing in Madrid and of acknowledged competency in judicial matters, a part of the members should be selected from among persons of recognized knowledge in the different branches of colonial legislation.

ART. 3. The secretary of the colonies may add temporarily to the commission a number of associate justices of the audiencias of Cuba, Puerto Rico, or the Philippines, according to the demands of work with which said commission is occupied and subject to the provisions of article 13 of the royal decree of the 3d of last December.

ART. 4. The Government shall appoint a president, a vice-president, and a secretary of the commission from among its members.

ART. 5. These offices, as well as that of the other members of the commission, shall be honorary and without pay.

ART. 6. The codification commission shall have the obligation to study and draft the projects of codes for observance in the colonies, to report whenever ordered by the secretary on the interpretation and incidents of the application of said codes, and to propose or indicate any points of the common colonial legislation which, in their judgment, it would be proper to reform.

ART. 7. For transacting the business of the secretary's office and other work of the commission there shall be four auxiliary officers, appointed by the secretary of the colonies. The first officer shall draw a salary of 3,000 pesetas; the second 2,500 pesetas; the third 2,000 pesetas, and the fourth 1,500 pesetas. The first three must be lawyers.

ART. 8. The salaries of said officers shall be charged to the appropriation for the expenses of the codification commission of the colonies in the respective budgets of the colonial provinces, the necessary amount of the appropriation for material of the commission being transferred to the sum allowed for the personnel of the same.

ART. 9. The provisions that conflict with those of the present decree are hereby repealed.

Given at the Palace on February 25, 1887.

MARÍA CRISTINA.

VICTOR BALAGUER,
Secretary of the Colonies.

Royal decree of August 12, 1887, extending to the Spanish colonial provinces and possessions the provisional law of June 18, 1870, establishing rules for the exercise of pardon.

STATEMENT.

MADAM: The exercise of pardon, which in all the times has been considered as one of the most beautiful privileges of the Crown, is applied in our colonial provinces without being subject to fixed rules and with such obstacles and inconveniences in its exercise that many a time complaints can not reach the throne from those who, rather more unfortunate than guilty, have committed a crime, or who, repenting their former life, desire to return to the society which has expelled them, and to become its useful and beneficial members.

In order to avoid these evils, and being anxious to introduce among this large part of the Spanish nationality all laws tending to improve the administration of the same, the Government of Your Majesty desires to extend to Cuba, Puerto Rico, and the Philippines, by means of a Royal decree, the law of June 18, 1870, which regulates the granting of pardons in the Peninsula, with such modifications which it has deemed advisable to introduce in conformity with the report of the council of state and the codification commission of the colonies. The Government entertains the conviction that Your Majesty, who manifests such zeal and predilection in the present and the future of those distant colonies, will deign to sign in the name of Your Majesty's august son this legal measure which introduces in the same and in their administration of justice so important an improvement.

In view of these reasons the undersigned secretary has the honor to submit to the approval of Your Majesty the accompanying project of a decree.

At the Royal feet of Your Majesty,

VICTOR BALAGUER.

SAN ILDEFONSO, *August 12, 1887.*

ROYAL DECREE.

In view of the reasons given by the secretary of the colonies, and with the approval of the council of secretaries, in the name of my august son the King, Don Alfonso XIII, and as Queen Regent of the Realm, I decree the following:

To the islands of Cuba, Puerto Rico, the Philippines, and the other Spanish colonial possessions there is hereby extended the provisional law of June 10, 1870, in force in the Peninsula for the exercise of pardons, with the modifications of the articles specified below, and which have been introduced in conformity with the opinion of the council of state and of the codification commission for the colonies.

This law shall become operative as soon as its promulgation is announced in the gacetas of the respective islands.

Given at San Ildefonso on August 12, 1887.

MÁRIA CRISTINA.

VICTOR BALAGUER, *Secretary of the Colonies.*

Provisional law of July 18, 1870, establishing rules for the exercise of pardon, with the suitable modifications for its application to the colonial provinces.

CHAPTER I.

PERSONS WHO MAY BE PARDONED.

ART. 1. Criminals guilty of any kind of crimes may be pardoned in conformity with the provisions of this law, and absolved from the whole or part of the punishment incurred by said crimes.

ART. 2. From the provisions of the preceding article are excepted—

1. Defendants in criminal trials upon whom a final sentence has not yet been pronounced.

2. Those who have not been at the disposal of the court pronouncing the sentence for the execution of the penalty imposed.

3. Second offenders in the same or in any other crime, for which they have been condemned by a final sentence. Nevertheless, an exception shall be made in the cases in which, in the judgment of the court pronouncing the sentence, or of the council of state, there are sufficient reasons of justice, equity, or public convenience for granting the pardon.

ART. 3. The provisions of the preceding article shall not be applicable to criminals condemned for the crimes included in Chapters 1 and 2, Title 2, Book 2, and Chapters 1, 2, and 3, of the same book of the Penal Code.

CHAPTER II.

THE KINDS OF PARDONS AND THEIR EFFECTS.

ART. 4. Pardons may be either full or partial. A full pardon shall be an absolution from all penalties to which the criminal may have been sentenced, and which he has not yet executed.

A partial pardon shall consist of an absolution from one or more of the penalties imposed, or from a part of all the penalties incurred which have not yet been executed by the criminal.

A commutation of the sentence or sentences imposed upon the criminal to milder sentences shall also be considered as a partial pardon.

ART. 5. A grant of pardon, in which at least the principal penalty which is the object of the pardon is not specifically mentioned, shall be considered null and of no effect, nor shall it be executed by the proper court.

ART. 6. A pardon absolving from the principal penalty shall include also an absolution from the accessory penalties imposed upon the criminal with the former, with the exception of the penalty of disqualification for public offices, and for political privileges, and of subjection to the surveillance of authorities, which shall not be considered as included, unless a special mention to that effect is made in its grant.

Civil indemnifications shall likewise never be included in pardons.

ART. 7. A pardon may be granted for accessory penalties, with the exclusion of the principal ones, and *vice versa*, unless they are indispensable by their nature and effects.

ART. 8. A pardon absolving from a pecuniary fine shall exempt the person pardoned from paying the sum not yet paid by him; but said pardon shall not include the refunding of the part already paid, unless a decision to this effect is expressly made.

ART. 9. A pardon can not be granted to exempt from the payment of judicial costs and expenses of the trial which are not due to the

State; but a pardon may be granted for a subsidiary fine which an insolvent who has been fined would in this connection have to suffer.

ART. 10. If a person fined has died at the time or after the time when sufficient causes exist for granting a pardon, the heirs of that person may be freed from the accessory fine of the penalty, in conformity with the provisions of articles 8 and 9.

ART. 11. A full pardon shall be granted to the persons fined only in the case when, in the opinion of the court pronouncing the sentence and of the council of state, there exist in his favor reasons of justice, equity, or public convenience.

In all other cases only a partial pardon shall be granted, and preferably a commutation of the sentence imposed to another sentence of less gravity within the same graduated scale.

Notwithstanding the provisions of the preceding paragraph, a sentence may also be commuted to another imposing a penalty within another different scale whenever there are sufficient grounds for such action in the opinion of the court pronouncing the sentence, or of the council of state, and, moreover, when the condemned agrees with the commutation.

ART. 12. When the principal sentence has been commuted the accessory sentences shall also be considered commuted to the other ones which, according to the provisions of the code, correspond to the sentence which the person pardoned should have to suffer.

Exceptions shall, however, be made in the case in which pardons are granted with an express order to the contrary.

ART. 13. The commutation of a sentence shall be void from the day on which the person pardoned fails to fulfill, for any reason depending on his will, the penalty which has been imposed on him in the commutation.

ART. 14. The following shall be the implied conditions of every pardon:

1. That no prejudice be caused a third person and no damage be done to their rights.

2. That the condemned person, before obtaining the pardon, must be pardoned by the person offended, if the crime for which he has been sentenced can be prosecuted only at the instance of a party.

ART. 15. In granting pardons there may, moreover, be imposed on the person pardoned all the other conditions suggested by considerations of justice, equity, or public utility.

ART. 16. The court pronouncing the sentence shall not fulfill any pardon the conditions of which have not been previously complied with by the person sentenced, excepting such as could not have been fulfilled on account of their special nature.

ART. 17. The grant of pardon is by its nature irrevocable, subject to the clauses with which it has been conceded.

CHAPTER III.

PROCEDURE OF REQUESTING AND GRANTING PARDONS.

ART. 18. Pardons may be solicited by the persons sentenced, their relatives, or any other person in their behalf without requiring a written power granting them right of representation.

Nevertheless, collective petitions or petitions containing a number of signatures asking pardon in the cause of another party shall not be admitted.

Those of official classes or corporations and of public officers are also prohibited, as provided for in the royal decree of July 1, 1867, extended to the colonies by the royal order of August 13 of the same year.

ART. 19. A grant of pardon may be recommended also by the court pronouncing the sentence, by the supreme court, or by the *fiscal* of either of said courts, in conformity with the provisions of the second paragraph, article 2, of the penal code, and also with the other provisions in the laws on procedure and criminal cassation.

The recommendation shall be confidential until the secretary of the colonies, after examining it, shall order the institution of the proper proceedings.

ART. 20. The Government may also institute the proper proceedings in conformity with the provisions of this law for granting pardons which have not been requested by individuals or recommended by courts of justice.

ART. 21. The petitions for pardons shall be directed to the colonial department through the audiencias and the governors-general.

In case the person sentenced serves the sentence in the penitentiaries of the peninsula or in those of our penal colonies in Africa, the chief of the establishment shall transmit the petition to the secretary of the colonies.

ART. 22. Every petition for pardon shall be accompanied by a confidential report of the chief of the establishment in which the prisoner serves his term concerning the conduct of the condemned, or by a report from the governor of the province in which the person sentenced resides, if the penalty does not deprive the person in question of liberty of action.

The governor of the province, or the chief of the penal establishment, or a diplomatic or consular agent, respectively, must furnish within the period of fifteen days the confidential report referred to in this article. to the person sentenced, who requests it for the purposes of the pardon,

ART. 23. The petitions for pardons, including those presented directly to the colonial department, shall be forwarded to the court which pronounced the sentence, for report, unless such reports have already been added, and said court shall give a hearing to the *fiscal*, or to the party offended, if there be any.

ART. 24. The court which has pronounced the sentence, after hearing the *fiscal* and the offended party, if there be any, shall make a report, stating therein, if possible, the age, status (whether married or single), and occupation of the person sentenced; his wealth, if known; his merits and antecedents; whether he has formerly been prosecuted and condemned for another crime, and whether he served the sentence or was pardoned; for what cause and in what form; the aggravating or extenuating circumstances involved in the perpetration of the crime; the time of preventive imprisonment which he underwent during the prosecution; the part of the sentence that he has served; his conduct after the final sentence, and especially the proofs or indications of repentance that have been observed; whether there are or not any parties offended, and whether the crime causes injury to a third party, and other information that may prove of value in the elucidation of the facts, concluding with the opinion of the court relative to the justice or advisability and form of the pardon to be granted.

This report must be issued by the court which pronounced the sentence within a period not exceeding thirty days, counting from the date on which it received the order to prepare the same.

ART. 25. The court which pronounced the sentence shall forward to the colonial department with its report the historical penal record and a certified copy of the final sentence of the condemned, with all the other documents that are deemed necessary for the proof of the facts.

ART. 26. The supreme court and the court which pronounced the sentence, in recommending officially to the Government the granting of pardons, shall at the same time forward with the recommendation the report and the documents referred to in the foregoing articles.

ART. 27. The secretary of the colonies shall thereupon forward the proceedings to the council of state, in order that the colonial section of the same should give in its turn its opinion relative to the justice, equity, or advisability of granting the pardon.

ART. 28. Notwithstanding the provisions of the foregoing articles, a commutation of a death sentence and those imposed for the crimes included in Chapters I and II, Title 2, Book 2, and Chapters I, II, III, Title 3, Book 2 of the Penal Code, may be granted without previously hearing the court which has pronounced the sentence nor the council of state.

ART. 29. A grant of pardon shall be made by means of a decree containing a statement of reasons and approved by the council of secretaries, which shall be published in the *Gaceta de Madrid* and in those of Habana, Puerto Rico, or Manila, as the case may be.

The revocation of the clause of detention shall be granted by a royal order stating the reasons therefor, while the effects of this penalty are in force in the colonial territories.

ART. 30. The execution of a pardon shall be intrusted invariably to the court which pronounced the sentence.

As far as the provisions in force on cassation of criminal matters permit, the governors-general shall preserve the powers granted them by the royal order of May 29, 1855, and those following, and the organic royal decree of June 9, 1878.

ART. 31. A petition or a recommendation for a pardon shall not suspend the execution of a final sentence, except in the case when death sentence has been imposed, which shall not be executed until the Government shall have acknowledged to the court which has pronounced the sentence the receipt of the petition or recommendation.

Royal decree of October 26, 1888, establishing the statistical service of the administration of justice in civil and criminal matters for the islands of Cuba, Puerto Rico, and the Philippines.

In conformity with the recommendation of the secretary of the colonies, with the approval of the council of secretaries; in the name of my august son, the King Don Alfonso XIII, and as Queen Regent of the Realm, I decree the following:

ART. 1. The statistical service of the administration of justice in civil and criminal matters is hereby established for the islands of Cuba, Puerto Rico, and the Philippines, and for this purpose the corresponding bureau is created in the general direction of grace and justice of the colonial department.

ART. 2. The statistics of the administration of justice in criminal matters shall include in separate sections the following groups:

First. A classification of crimes and misdemeanors according to the order, denomination, and method of the penal code, stating the number

of crimes, that of the criminals prosecuted, acquitted, or condemned as authors, accomplices, or concealers; punitive, correctional, or light penalties, and cases of imposition of fines, bonds, degradation, civil interdiction, confiscation of the products and instruments of a crime, and costs.

Second. The crimes and misdemeanors which have given rise to proceedings in the territory of each criminal audiencia, classified in the order, denomination, and merit of Titles 1 to 14 of Book 2, and from 1 to 4 of Book 3 of the Penal Code, with a specification of the number of crimes, of the persons tried criminally, acquitted, or condemned to punitive, correctional, and light penalties.

Third. The proceedings carried on in the territory of an audiencia: Oral trials, proceedings brought against senators and deputies, preliminary trials demanding liability, cases in *flagrante delicto*, proceedings for libel and slander against private persons; by printing, drawing, or any other mechanical means of publication, extraditions and proceedings against absent criminals; appeals in cassation for infraction of law or of form, with a specification of those prepared, and those entered, admitted, and refused; complaints to superior authorities for refusal to admit testimony in order to enter an appeal of cassation and appeals for revision; trials of misdemeanor in first and second instance.

Fourth. Classification of criminals according to sex, age, status (whether married or single), description, birthplace, education, profession, or occupation.

Fifth. Classification of repeated offenses, with specification whether they have been repeated once or more, and a subdivision, according to sex, status (whether married or single), description, birthplace, education, and occupation of criminals.

Sixth. Relation between the crimes and individual conditions of criminals, with a specification in each class of crimes, in the order used in the code, of the number of criminals according to sex, age, status (whether married or single), description, birthplace, education, profession, or occupation, and the character of the prosecution.

Seventh. Relation between the territory of criminal audiencias and the individual conditions of criminals according to sex, age, status (whether married or single), description and birthplace, education, profession, or occupation, and the character of the prosecution.

Eighth. Special statistics of oral trials, with the specification of the number of prosecutions, causes finally decided by said procedure, time consumed for their hearing by periods of three months, one year, and more than one year, consent of the criminal, suspension of proceedings, acquittals and condemnatory sentences, causes filed on account of refusal to attend, insane criminals who have become such after the perpetration of the crime, liberty under bail, and provisional imprisonment, with the specification of its duration by quarterly periods; witnesses examined, their number, amount of indemnifications, physicians and specialists taking part, and their fees.

Ninth. Suicides, their number and known or probable causes.

Tenth. General and special pardons, commutations and reduction of penalties, with the specification of the class of crimes to which they refer; changes in the register of condemned persons.

ART. 3. The statistics of the administration of justice in civil matters must include the following groups, elaborated in as many tables as are deemed indispensable for their better understanding:

First. Municipal courts: Instruments of conciliation, classification according to their object and decisions; oral trials classified according

to their object, duration, termination, and costs according to the schedule of fees; trials of ejectment, classified by their causes, duration, termination, and costs according to the schedules of fees.

Second. Courts of first instance: Population, superficial area, and a general table of judicial business in civil and commercial matters of each of said courts during the year; appeals taken to courts of first instance from decisions pronounced by municipal courts, and classification of the same, according to whether these sentences have been confirmed or modified wholly or partially; classification by matters of the civil substantive law of affairs decided by the courts of first instance; classification of said business by titles and chapters of the law on civil procedure, their duration, and the amount of costs according to the schedule of fees; commercial matters resolved upon by inferior courts and classified according to the commercial code.

Third. Territorial audiencias: Population, superficial area, and organization of the personnel of each audiencia; a general table of the judicial work of each one of the latter in civil and commercial matters during the year; appeals classified according to the courts of first instance pronouncing the sentences appealed from, and classification of the same according to whether they have been confirmed or modified wholly or partially; classification by matters of the substantive civil law of the business decided upon by the audiencias; classification of the same by titles and chapters of the law on civil procedure, their duration, and costs according to the schedule of fees, commercial matters resolved upon by audiencias, and classified according to the commercial code.

Fourth. The supreme court: Business coming from Cuba, Puerto Rico, and the Philippines; general statement of the civil and commercial matters in which it has had cognizance during the year; appeals in cassation classified according to the matters of the substantive civil law, by titles and chapters of the law on civil procedure and of the commercial code; classification of appeals acording to their termination, and the audiencias pronouncing the judgments that have been appealed from.

Fifth. Voluntary jurisdiction: Decisions of this jurisdiction classified according to their object, their termination, duration, and the amount of costs according to the schedule of fees.

ART. 4. The secretary of the colonies shall circulate the statistical papers, forms, and instructions in order to organize the transmission and the publication of the data.

ART. 5. In order to facilitate the routine of the numerous details occasioned by the organization of this service, the chief of the bureau created with this object in the general direction of grace and justice of the colonial department shall correspond directly with the secretaries of audiencias and chambers, reporting on the matter to the director of this branch.

ART. 6. In the first fifteen days of February of each year the bureau shall publish a statement of those audiencias or chambers which have sent complete statistical data, and suitable proceedings shall be instituted to adopt the proper decision with respect to those which have not forwarded the same.

ART. 7. The secretary of the colonies may order visits of inspection, delegating for the purpose persons of recognized competence and capacity, in order to verify or complete the statistical data, whenever he deems such action necessary.

ART. 8. The bureau of statistics shall be organized with the necessary personnel, the present personnel being utilized whenever possible

and increased if it be insufficient, for which purpose the Government shall be granted sufficient funds in harmony with the provisions of the budget laws in force.

Given at the Palace on October 26, 1888.

MÁRIA CRISTINA.

TRINITARIO RUIZ Y CAPDEPON,
Secretary of the Colonies.

Royal order of March 12, 1889, on filling vacancies of the fourth series of succession in the judicial and public prosecution services.

YOUR EXCELLENCY: From the fact that the legislation in force grants to the Government of His Majesty the power to fill vacancies in the fourth series of succession of courts of first instance with lawyers possessing certain qualifications proving their ability and experience in court, there was recognized an excellent principle, the combination of which with scientific culture demonstrated in public debates constitutes the most perfect method for entrance into the judicial service.

It must be admitted that, although said principle in exceptional and distinguished cases has produced excellent results, it has served very often as a mere pretext for the basis of favoritism.

The Cortes of the Kingdom in its high wisdom is called upon to solve definitely the burning problem of recruiting officers from said personnel, taking into consideration the lessons of experience, and above all the necessity of providing a proper reward for certain duties of substitutes, creditably performed, but while the Parliament is making its decision, and especially while there are candidates and officers who have proved their skill in the noble competition of examinations, the vacancies that occur should be awarded them with no other exception or preference than that determined by the strict order of their seniority. In virtue of these considerations Her Majesty (whom God preserve), the Queen Regent of the Realm, in the name of her august son, Don Alfonso XIII, decrees the following:

1. That all vacancies in the courts of the entrance category that shall hereafter occur be filled, in the strict numerical order, with candidates to the judicial service according to the corresponding graded list, and when this list has been exhausted, in the order of seniority with secretaries and vice-secretaries who request them and who hold their offices as regular incumbents, preference being given to those who entered the service through competitive examination.

2. Vacancies in the fourth series of succession that may occur in the graded list of judges of the promotion and final categories shall be filled with secretaries who shall have entered the service in a similar way, and who, besides, possess the qualifications required for promotion by the legislation in force.

To these rules, which I communicate to your excellency by royal order, your excellency will kindly conform in the recommendations for filling vacancies in the ranks of judges of the entrance, promotion, and final categories.

May God preserve Your Excellency many years.

MADRID, *March 12, 1889.*

CANALEJAS Y MÉNDEZ.

To the Assistant Secretary of this Department.
(*Gaceta* of March 13.)

Royal order of March 16, 1889, on promotions in the third series of succession in the judicial and public prosecution services.

YOUR EXCELLENCY: In establishing in the organic law on judicial power and in the additional law to the same a mixed system of promotions, permitting the reward of both the prolonged services and the extraordinary merits earned in the judicial and the public prosecution services, the prerogative of seniority was granted to officers occupying the first places in the graded list of their category.

This system of promotions necessitated a great conservatism in exercising the great powers granted the Government by the series of succession in promotions by merit; but it must be confessed that the promotions have not corresponded to the high motives inspiring the legislator, and have been limited simply to respecting the text of legal provisions. Cases arise, as frequent as painful, when through a series of postponements seldom justifiable, very deserving and zealous officers, to whom fate has been unfavorable, appear in low-grade offices of the graded list of a certain category, and when each promotion follows only after a long period of life spent in the service, until the promotion can not be refused because of seniority.

A bill reforming the organic law has been submitted to the Chambers, and the latter have been intrusted with the establishment of reasonable guaranties for the proper exercise of the appointment power; but meanwhile this department may take notice of legitimate claims and utilize the third series of succession established by the laws in force, in order to compensate for the consequences of unjustifiable postponements, preserving with the second and the fourth a sphere of action which is sufficient and perhaps excessive, giving room to the discretionary judgment of the secretaries.

In virtue of these special considerations, Her Majesty (whom God preserve), the Queen Regent of the Realm, in the name of her august son, the King, Don Alfonso XIII, has decreed the following:

1. That in the future Your Excellency will please recommend for filling vacancies corresponding to the third series of succession that may occur in the graded list of all the categories of the judicial and public prosecution services, except those of associate justices of the supreme court, with officers of the immediately inferior class who possess the qualifications required for promotion by the legislation in force and have to their credit the greatest number of years in the service.

2. That for the fulfillment of this sovereign provision a special graded list be made and published, in which the officers of each category, without discrimination between the judicial and public prosecution services, shall be arranged in strict order of seniority, computed for the actual time spent in the said service.

I communicate the above by royal order to your excellency for your excellency's information and consequent effect.

May God preserve Your Excellency many years.

CANALEJAS Y MÉNDEZ.

MADRID, *March 16, 1889.*
(*Gaceta* of March 17.)

Royal order of March 19, 1889, on the filling of vacancies of the judicial and the public prosecution services in the first series of succession.

YOUR EXCELLENCY: The first series, which for filling vacancies has been reserved by the additional law to the organic law on judicial

power for officers holding the first place in the graded lists, has been granted, up to the present time, indiscriminately and without subjection to rules among those occupying this coveted place in the judicial or the public prosecution services, it having been frequently the case that by virtue of this privilege promotion has been awarded to officers with a time of service shorter than that of other officers of the same category and with the same number, although of a different graded list.

In order to procure hereafter in these cases an interpretation of the law that would be more in conformity with the intention of the legislator, and to compensate for unjustifiable postponements in promotions,

Her Majesty (whom God preserve) the Queen, Regent of the Realm, in the name of her august son, Don Alfonso XIII, has decreed the following:

1. That all the vacancies which hereafter correspond to the first series of succession referred to in articles 42, 43, 44, and 45 of the additional law to the organic law on judicial power, shall be filled with officers of the category immediately inferior, who, not having previously renounced in writing their right to promotion, occupy the first place in the graded lists of the judicial or the public prosecution services, and have to their credit the greatest period of time passed in the category or in the service in question, when several officers are equal in all other respects.

2. From the preceding rule are excepted the vacancies which are filled by the Government in conformity with the power granted the same in the third paragraphs of the said articles 44 and 45.

Your Excellency will please make your recommendations for the series of succession by seniority in conformity with these provisions, which I communicate to your excellency by royal order.

May God preserve Your Excellency many years.

CANALEJAS Y MÉNDEZ.

To the Assistant Secretary of this Department.

MADRID, *March 19, 1889.*
(*Gaceta* of March 20.)

Royal order of March 23, 1889, on promotions in the judicial and the public prosecution services.

YOUR EXCELLENCY: The most superficial examination of the graded lists shows how easily some officers succeed in reaching the highest grades of promotions, and how, on the other hand, other judges and associate justices of irreproachable service are being retired while holding modest positions, without regard to lengthy services. The column of the graded list destined to show the seniority in the service presents differences of 15 and even 20 years of service between officers in the same category. Such facts tend to discourage the personnel, to dissuade brilliant youths from taking part in competitive examination for entrance in the service, and render favoritism more numerous than is desirable in seeking benefits and prerogatives that should be granted only for acknowledged and absolute merit.

It is true that an inflexible standard of absolute seniority is impracticable in so numerous a personnel coming from such various sources. But if the latitude allowed by the organic law proves to be beneficial in admitting to the highest grades persons of a genuine and acknowledged juridical ability, it does not by any means authorize neglecting under the press of harmful political influences officers of older standing, who, judging from the fact that they are kept in the service, must

be considered worthy of their office, or else they should be discharged from the duties for which they are considered incapable.

The royal decree of April 3, 1884, established wise limitations of the discretionary judgment of secretaries (*arbitrio ministerial*), whose maximum limits have been fixed by the organic law and by the additional law, in order that appointments should be exercised within said limits according to the criterion with which the circumstances or personal convictions influence the secretaries in promotions authorized by their signatures.

Granting full appreciation and respect to the high motives which guided the illustrious secretaries to whom the introduction of extensive reforms suggested and on whom perhaps it imposed an ample exercise of the power of appointment, it is high time, until the Cortes of the Kingdom in their high wisdom establish a system of promotions absolutely exempt from favoritism, to restrict recommendations for promotions to narrower limits, even if these empirical changes, though inspired by proper motives, are not ideal and can not be considered a model of perfection.

In making use for filling vacancies in the fourth series of succession of the provisions of the organic law and the additional law to the same, with the wise limitations established by the royal decree of April 3, 1884, there remains sufficient room for the discretionary judgment of the secretaries in order to recognize and recompense exceptional merits with such an excessive advancement that in some graded list preference is apparently given over 100, 180, and even over 224 officers of greater seniority.

In what refers to the second series of vacancies it is beyond doubt that by limiting the recommendations for promotion fo the first third of the graded list an adequate opportunity will be left to reward genuine merit, and by combining this privilege of seniority in the category with the privilege inferred from the inscription in the first half of the graded list of absolute seniority in the service the desire to recompense a special merit may be made to harmonize with the rule that by paying a legitimate attention to officers entering modest categories those should not be systematically overlooked who, in conformity with the legal provisions, entered the service through higher categories.

The rules contained in the royal orders of the 12th, 16th, and 19th of March of this year, and in the present royal order, fix the maximum limits to which the secretary authorizing them shall restrict appointments and promotions which he submits to His Majesty in virtue of the recommendations submitted by your excellency, paying more attention to the personal records than to constant recommendations, born of the harmful prevalence of the desire to give favorable statements, even if they are not justified by facts. The first series of vacancies shall be, as the law commands, reserved strictly to the officers occupying the first places in the graded lists of their categories; the third series of vacancies shall be awarded for seniority in the service, thus compensating for long delays of promotion, and the second series of vacancies shall be filled with officers occupying the first third of the graded list of their category and the first half of their order of succession, in conformity with the graded list of absolute seniority, ordered drafted by the royal order of the 16th of the current March.

In virtue of the considerations stated above, Her Majesty (whom God preserve), Queen Regent of the Realm, in the name of her august son, the King, Don Alfonso XIII, has decreed that the second series of vacancies included in articles 41, 42, 43, 44, and 45 of the additional

law occurring hereafter shall be filled with officers of the immediately inferior category who possess all the other qualifications required by the provisions in force and occupy places included in the first third of the graded list of their category and in the first half of the register of absolute seniority in the service, drawn for said category by the royal order of the 16th of March of the current year.

I communicate this to Your Excellency by royal order for your observance in making the proper recommendations.

May God preserve Your Excellency many years.

CANALEJAS Y MÉNDEZ.

To the Assistant Secretary of this Department.

MADRID, *March 23, 1889.*

(*Gaceta*, March 24.)

Royal order of August 24, 1889, on the reinstatement of suspended officers in the judicial and the public prosecution services.

In the proceedings instituted for determining the form in which suspended officers may reenter active service in the judicial and the public prosecution services, Her Majesty the Queen (whom God preserve), Regent of the Realm, in the name of her august son, the King, Don Alfonso XIII, in conformity with the report of the section of state, grace, and justice of the council of state, has deemed proper to order that suspended officers desiring to reenter the service shall solicit their reinstatement witin the period of one month, which can not be extended, counting from the date. When said period has elapsed, the respective proceedings shall be transmitted to the board created by the royal decree of February 6, 1888, and if the qualifications of the petitioners for reinstatement in the active service has been declared, they shall be included in the proper place of their graded list.

I communicate the above by royal order to Your Excellency for your information and consequent effect.

May God preserve Your Excellency many years.

CANALEJAS Y MÉNDEZ.

To the Assistant Secretary of this Department.

MADRID, *August 24, 1889.*

(*Gaceta*, August 25.)

Royal decree of September 24, 1889, establishing certain guaranties of judicial irremovability and rules for promotions and transfers.

STATEMENT.

MADAM: The guaranties of irremovability established by the organic law on judicial power protect only at the present time the officers entering the service by means of a competitive examination, so that more than four-fifths of our judges and associate justices may be discharged, suspended, and transferred without even a statement of reasons. If to this evil we add the fact that promotions in the second, third, and fourth series permit, without requiring public account nor previous investigation, to dispose of the future of officers by granting a rapid advancement or by constantly delaying it, we find the cause for so

many complaints made incessantly in the Parliament and in the press. It is therefore not to be wondered at that the secretary of grace and justice scarcely has time to serve the nation in affairs of a higher importance, as he is daily a victim of hundreds of recommendations forcing him to misuse his discretionary judgment in favor of the persons recommending, and is impeded from exercising them to the benefit of the public service.

The undersigned secretary does not defend the principle of absolute seniority, especially when so heterogeneous a personnel of widely varying origin is in question; he is aware of the fact that an absolute irremovability may sometimes sanction the basest of tyrranies, lowering at the same time all judicial discipline; he does not intend to infringe by departmental measures the resolution of the Cortes of the Kingdom of such important problems; he does not procure a tardy remedy for these evils, as from the beginning of the performance of his duties in this respect he has restricted the appointments of the second, third, and fourth series of succession by the most extreme rules. Other secretaries are at liberty to modify the criterion and standard of conduct, and to request of Your Majesty a repeal of the project of a decree attached thereto, if, according to their principles of government, they deem such action necessary.

The undersigned secretary believes that the most correct interpretation of the law attributes to the exercise of the discretion of the secretary in promotions its natural limits in the interest of the administration of justice and in the recompense of acknowledged and exceptional merits of an officer promoted. It is probable that in exercising these powers of the secretary, action has almost always resulted without taking into account other less acceptable reasons. Among the mistakes never intentionally committed, those committed by the undersigned secretary are perhaps most numerous. But without looking backward, and turning our eyes to the improvement in the future, it is impossible for us not to acknowledge that publication of appointments and information referring to officers is a due tribute to the principle of publicity of departmental acts, characteristic of our system of government, whose natural complement is based on exposing to public opinion the grounds for preference which otherwise, if founded on reasons carefully reserved by the secretary, may serve as a pretext for murmurs of discontent which it is important to prevent in all services, including the judiciary, and, what is more important, for the loss of that inward satisfaction which is an impulse of such noble actions and heroic sacrifices.

Without acknowledged merits, appraised by independent standards, and without an irreproachable record of service, every preference savors of injustice, and the seniority comes forward claiming its sway; only in the highest category a legal tradition supported by valid reasons and deep-rooted practices justifies more amplitude in appointing, even if the undersigned secretary is disposed and considers himself obliged not to go beyond the first third of the inferior graded list.

The confidence which the Government of Your Majesty places in the superior courts, against whose reports no transfers or promotion shall be decreed, and the irremovability of all judges and associate justices until a new law shall make a final decision concerning officers entering the service without a competitive examination, would prove dangerous expansions of a past romanticism, with the result that the judicial organism would lack the necessary energies checking the injustice from above and the iniquity from below.

After having their authority increased, after having their disciplinary self-government initiated under the supreme inspection of the Government, the chambers of administration would disappoint the expectations of the undersigned secretary, showing him ingratitude if they do not help him in expelling the vicious elements in rewarding the other officers, who are the honor and glory of our judiciary. All social organisms reach the grade of development and independence which they conquer; if judicial officers believe that they only fulfill their duties conscientiously, without paying attention to the damage which may be caused to the prestige of the corps by their colleagues whose faults may become public and are not tried and punished in due legal proceedings; if reports on the personnel are subject to partiality for sentimental reasons; if the chambers of administration do not punish with a strong hand the abuse of so many petitions for transfers requested for reasons of convenience often based on feigned sickness; if irremovability is employed as a means of oppression, taken avail of by judges interested in local strifes in favor of their patrons, it shall be necessary to subject the discipline and management of promotions to the discretionary judgment of the secretary.

The undersigned secretary does not expect such alternative, and if he were afraid of it, he would not seek at the price of so painful disappointments a popularity for the Government of which he forms part. Intrusting to the courts themselves the discipline of the employees, conferring upon them the high mission of securing the irremovability of judges without causing damage to justice, seeking in the decisions a certain criterion for promotions in series of appointments, submitting voluntary transfers and changes to the report of hierarchical superiors, the undersigned secretary does not think that want of authority and independence in superior courts can be alleged, and he is confident that under such conditions said courts must answer to the expectations of the Government, whose sole aim is to raise the solemnity of justice and to invigorate the independence and liability of those upon whom society has conferred this pure treasure of social wealth for administration.

In virtue of these considerations, with the approval of the council of secretaries, the undersigned secretary has the honor to submit for the approval of Your Majesty the accompanying project of a decree.

At the royal feet of Your Majesty.

JOSÉ CANALEJAS Y MÉNDEZ.

SAN SEBASTIÁN, *September 23, 1889.*

ROYAL DECREE.

In view of the reasons assigned by the secretary of grace and justice, with the approval of my council of secretaries, in the name of my august son, the King, Don Alfonso XIII, and as Queen Regent of the realm, I decree the following:

ART. 1. Until a new law establishes definitely the guarantees of judicial irremovability and determines the conditions with which judicial officers entering the service otherwise than by means of a competitive examination must comply, in order to enjoy the privilege, no judge or associate justice can be declared suspended or discharged except for cause and with the requisites established in the organic law on judicial power of September 15, 1870, now in force.

ART. 2. The judicial officers who have not entered the service by competitive examination may be transferred only subject to the following rules:

First. By virtue of administrative proceedings in view of the exigencies of the service, and in conformity with the report made in each case by the chamber of administration of the respective territorial audiencias, in cases relating to judges of examination and of first instance, and associate justices of criminal and territorial audiencias, or of the chamber of administration of the supreme court, in the cases relating to presiding judges of chambers of territorial audiencias.

Second. Upon the request of the officers concerned, provided the report referred to in the preceding rule is favorable.

Third. Through exchange, the advisability of which shall be reported on by the chambers of administration of territorial audiencias, or by the supreme court, respectively.

ART. 3. The transfers and exchanges referred to in the rules of the preceding article shall, in addition, be subject to the incompatibilities established by the legislation in force, and no transfer or changes solicited can be allowed until one year has elapsed from the date of the last appointment or transfer.

ART. 4. In the cases of exchanges or transfers granted upon the petition of the officer concerned, the period allowed for taking possession of the office can be extended. In transfers granted in virtue of the administrative proceedings treated of in rule 1 of article 2, the extension granted shall not exceed thirty days. In either case, it shall be construed that the officer resigns the office for which he has been appointed if he fails to take possession of it within the respective periods allowed for taking possession, and does not give justifiable reasons for his inability to do so, in conformity with the provisions of article 187 of the organic law on judicial power.

ART. 5. The vacancies in the judicial and the public prosecution services, corresponding to the first series of succession established by articles 41, 42, 43, 44, and 45 of the additional law to the organic law on judicial power, shall be filled with officers of the category immediately inferior who have not previously filed a written renunciation of their right to promotion, and who occupy the first place in the respective graded lists, and are credited with the greatest length of service in their category. Other conditions being equal, the preference shall be granted to the officer of the greatest seniority in the service. There shall be excepted from this provision the vacancies which are filled by the Government by virtue of the powers that are granted to it by the third paragraphs of articles 44 and 45 of the said law.

ART. 6. In filling vacancies of the second series of succession established by the law, up to the category of associate justices of territorial audiencias, inclusive, preference shall be given to officers who have to their credit the merits mentioned in article 170 of the organic law on judicial power. To carry this provision into effect the persons concerned shall apply to the department of grace and justice in the manner and with the documents specified in article 169 of the said law. The department shall forward the proceedings to the qualification board (*junta calificadora*) of the judicial power, in order that the latter, in view thereof and the judgment of the officer, decides whether he can concur or not in the declaration of merits. After the former have been returned, if the resolution of the board is favorable, and in no other case, they shall be transmitted for report to the corporation or superior

court designated by the Government in cases 1, 2, and 3 of the said article 170, and to the council of state in the case referred to in No. 4 of the same article. The bureau of the personnel of the said department shall open and keep a register, in which a memorandum shall be duly made of the officers receiving favorable qualifications. The Government shall appoint freely from among said officers, provided that in each case the appointee possesses the other legal qualifications required for promotion.

ART. 7. If there are no officers who have duly qualified merit for promotion in the second series of succession as described in the preceding article, promotion shall be granted to those who are recommended officially by chambers of boards of administration of audiencias in the reports which are for this purpose demanded of them by the department of grace and justice, or in the recommendations duly accounted for, which may be submitted by said chambers or boards, whenever an officer of their territory in their opinion deserves promotion. In the promotions granted in virtue of the provisions of this and the preceding article special mention shall be made of the merits on which the appointment is based, and the decision shall be published in full, or, if the text is very long, in a summarized form, in order that it may afford a legitimate satisfaction to the officer promoted and a noble stimulus to his colleagues.

ART. 8. In order to fill the vacancies, the provision of which should be effected by the third series of succession, in the categories referred to in articles 41 and 45, inclusive, of the additional law to the organic law, appointments shall be given to officers of the class immediately below who possess the qualifications for promotion required by the legislation in force and who, in addition, have to their credit the greatest number of years in the service and have no unfavorable memorandum in their personal record.

ART. 9. The vacancies corresponding to the fourth series of succession shall be filled in the manner prescribed in article 6 of the present decree for the second series of succession, but this action shall be taken only in the case when the Government does not make use of the power given it by the additional law for granting appointments to the persons designated by the same and without prejudice to the legal provisions in force concerning the suspended officers of the judiciary and the department of public prosecution and the officers serving in the same branches in the colonies.

ART. 10. The provisions on the irremovability of officers of the judicial service contained in the preceding articles shall be enforced from the publication of this decree without prejudice to the resolutions offered by the report of the qualification board of the judicial power, which shall continue as speedily as possible the examination of the personal records referred to in rule 3, article 1, of the royal decree of February 6, 1888.

ART. 11. All the former provisions which conflict with the present decree are hereby repealed.

Given at San Sebastián on September 24, 1889.

MARÍA CRISTINA.

JOSÉ CANALEJAS Y MENDEZ,
Secretary of Grace and Justice.

(*Gaceta* of September 30.)

Royal order of December 16, 1889, on the filling of vacancies in the judicial and the public prosecution services.

As it is frequently the case in filling vacancies in the judicial and the public-prosecution services that there are no officers possessing the legal qualifications for promotion, and in order to establish a general standard to be observed in the future, the King (whom God preserve), and in his name the Queen Regent of the Realm, has decreed the reestablishment in full force of article 11 of the royal order of May 29, 1885, which provides that if in one or more series of succession no officers are found possessing the required qualifications for the office to be filled, said series of succession shall be passed over, and a memorandum to this effect entered in the proper book, while the vacancy shall be filled from the series of succession next in order.

I communicate the above to you by royal order for your information and other effects.

May God preserve you many years.

BECERRA.

MADRID, *December 16, 1889.*

To the Governors-General of Cuba, Puerto Rico, and the Philippines, and to the Director-General of Grace and Justice of this Department.

Royal decree of March 28, 1890, reorganizing the secretary's office of the codification commission of the colonial provinces.

Upon the recommendation of the secretary of the colonies, in the name of my august son, the King, Don Alfonso XIII, and as Queen Regent of the Realm, I decree the following:

ART. 1. The duties of secretary of the codification commission for the colonial provinces shall be performed by the chief of the bureau of civil matters and legislative reforms of the general direction of grace and justice of the colonial department and by the personnel detailed to that bureau.

ART. 2. The provisions of the royal decree of February 25, 1887, reorganizing the said commission, shall remain in force in all matters which do not conflict with the provisions of this decree.

Given at the palace on March 28, 1890.

MARÍA CRISTINA.

MANUEL BECERRA,
Secretary of the Colonies.

Royal decree of October 13, 1890, reestablishing the assimilation of the employees of the general direction of grace and justice and other officers of the department, to whom such assimilation is due, with the officers of the judicial service.

By virtue of the reasons stated to me by the secretary of the colonies I decree the following:

ART. 1. The positions of the personnel of the colonial department belonging to the general direction of said department, up to the third

class of officers of administration, auxiliary officers of the secretary's office of the fifth class, inclusive, shall be considered as of officers of the judiciary, serving in commission, with all the privileges that may in this respect be accorded them. Consequently the persons discharging said offices shall have the respective category and grades, shall be granted the same rights of seniority, and shall obtain the same credit for their services which would be granted them if their services were actually rendered in inferior and superior courts of the colonies.

ART. 2. For the assimilation of administrative and judicial categories, in consequence of the provisions of the preceding article, the following equivalents are established:

Chiefs of administration of the first class, officials of the senior secretary's office, shall have the same rank as the associate justices of the audiencia of Habana.

Chiefs of administration of the second and third class, officials of the secretary's office of the first and second class, as the associate judges of territoral audiencias outside of Habana.

Chiefs of administration of the fourth class and chiefs of bureaus of the first class, officials of the secretary's office of the third class, and auxiliaries of senior secretaries' offices, respectively, as associate justices of criminal audiencias.

Chiefs of bureaus of the second class, auxiliaries of the first grade, as judges of the final category.

Chiefs of bureaus of the third class and first-grade officials of administration, auxiliaries of the second and third classes, as judges of the promotion category.

Second and third grade officials of administration, auxiliaries of the secretaries' offices of the fourth and fifth grades, as judges of the entrance category.

The categories above enumerated shall be understood as acquired by analogy in their equivalents of the department of public prosecution.

ART. 3. An officer of the direction, who shall be transferred with or without a promotion to the judicial and the public-prosecution services in the colonial provinces can not return to the direction without having held his office in the inferior or superior courts of those provinces for an uninterrupted period of two years.

ART. 4. A change for executive offices of those in the judicial and public-prosecution services in the colonies can be decreed only in making use of the fourth series established by the royal decree issued by the department of this branch on the 26th of October, 1888.

ART. 5. The officers attached to the general direction of grace and justice of the colonial department up to the category of official of administration of the third class, inclusive, shall enjoy the benefits granted by this decree, and the following rules shall be applied for carrying out the provisions of article 2.

First. Those who have acquired a judicial category higher than that of the office they fill shall preserve said category with all the rights granted therewith in the order conferring the office.

Second. Those having a category inferior to that of the office which they fill shall obtain the category belonging to that office, acquiring it for all legal effects, after having served two years in the inferior category.

Third. For the personnel to which a judicial category has not been granted, and which served in the general direction of grace and justice at the date of the promulgation of the budget law now in force, issued

for the island of Cuba and for the personnel of the aforesaid general direction before the publication of this decree, the assimilation to the judicial service of the colonies is hereby reestablished and carried into effect at once under the conditions and in the form established by the decree of May 2, 1869, and by the royal decree of April 12, 1875.

ART. 6. The assimilation reestablished by the third rule of the preceding article does not grant the right to enter into the judicial or the public-prosecution services of the peninsula, nor to appear in a certain category in the united graded lists for the branches of the service in the peninsula and the colonies, until the persons obtaining assimilation comply with the requirements fixed in article 7 of this decree.

ART. 7. The officers who at the time this decree is published are attached to the general direction of grace and justice may acquire the judicial category corresponding to the office which they fill when they possess or comply with the following requisites:

First. Of having reached the age of 25 years and being a lawyer.

Second. Of having served the number of years which the additional law on judicial power, promulgated for the Peninsula, requires of lawyers for obtaining by the fourth series of succession an equal position in superior or inferior courts. The time spent in law practice shall be taken into account.

Third. Of having to their credit among these services at least four years of service in the direction of grace and justice of the colonial department.

ART. 8. In conceding assimilation of rank that may belong to officers who may in the future be attached to the direction of grace and justice of the colonial department, proceedings shall be instituted in each case, in which said requirements and the qualifications of aptitude of the officer seeking the assimilation shall be duly demonstrated.

ART. 9. Officials of administration of the fourth and fifth classes, and auxiliaries of the sixth and the seventh classes serving in the general direction of grace and justice, shall in no case be considered as assimilated to the judicial service.

ART. 10. For the purposes of assimilation the personnel of the general direction of grace and justice of the colonial department shall include the categories, classes, and number of officers established, as follows:

One chief of administration of the first class.
One chief of administration of the second class.
One chief of administration of the third class.
Two chiefs of administration of the fourth class.
Two chiefs of bureaus of the first class.
Three chiefs of bureaus of the second class.
Three chiefs of bureaus of the third class.
Three first grade officials of administration.
Eight second grade officials of administration.
Two third grade officials of administration.

And the number of officials of the fourth and fifth grades and of candidates that are considered necessary for the efficacy of the service.

Given at San Sebastián on October 13, 1890.

MARÍA CRISTINA.

ANTONIO MARIA FABIÉ,
Secretary of the Colonies.

Decree-law of October 13, 1890, on entrance, transfers, and promotion of officers of the general administration of the State in the colonial possessions.

In view of the reasons stated to me by the secretary of the colonies, I decree the following:

CHAPTER I.

EMPLOYEES.

ART. 1. In the provisions of this decree-law shall be considered included the officers of the general administration of state in the colonial department and its peninsular dependencies, and those of the provinces subject to the rule and government of said department, whose services are not regulated by special provisions.

ART. 2. The employees to whom the preceding article refers may aspire, according to their respective abilities, to the administrative categories and classes, recognized by the provisions in force in the Peninsula, and to the salaries fixed by the general budget laws for the colonies, and the extra pay fixed by the same laws for offices in the colonial provinces.

ART. 3. The colonial department shall draft two general graded lists, one including all the employees of royal appointment in the actual service of the general administration of state, either in the department and its peninsular dependencies, or in the colonial possessions; and another, including the discharged officers who served in the administration of State above referred to.

The office of the assistant secretary of this department shall also draft two other graded lists which shall contain the subordinate personnel, active as well as passive, of the said branch of service and its peninsular dependencies.

The same shall be done by the governors-general of the colonial provinces with regard to the subordinate personnel depending on said governors and the other authorities of the state in the territory intrusted to them, and shall forward to the department copies of both graded lists.

ART. 4. Employees belonging to services or bodies organized by special provisions or laws shall continue to be governed thereby in so far as they are not modified by the present decree law or other special provisions.

The provisions included in this decree law shall have a supplementary character in all the cases not provided for in the exceptional provisions governing said employees.

Should any of said services or bodies be abolished or dissolved the employees of the same shall be included in the general graded list of discharged officers of the general administration of state of the colonies, and their category and class shall be computed on the basis of the amount of personal salary which they received.

ART. 5. The employees of special bodies or branches of service who obtain an employment included in the graded lists of active officers of the general administration of state in the department and its dependencies, in the Peninsula and in the colonies, shall be kept on the graded list of their respective branches of service or bodies, and may return to the employment in the same in the cases and under the conditions authorized by the provisions governing said employment.

ART. 6. In the future no special branch of service shall be organized except by a bill of law voted upon in the Cortes.

ART. 7. The appointments of officers belonging to the category of a superior chief of administration, or of chief of administration, shall be made by means of a royal decree; those of chiefs of bureaus and of officers of administration by a royal order; appointments of subordinate officers by the assistant secretary's office of the department and by the superior colonial authorities within the limit of the powers granted to each of them.

ART. 8. In each appointment a statement shall be made of the category and class of the office and of the legal qualifications of the appointee and the series of succession to which the appointment corresponds.

ART. 9. The superior chiefs of administration and the civil governors of the colonial provinces, who from other considerations have no right to be included in the graded lists with the categories and classes of said officers, shall not enter said categories or classes until they have been filling the same for two years, deducting the time of leave, office or offices corresponding to the respective category and class.

Should the time of service in a higher category or class be insufficient to include the officer in question in the same on the graded list that time shall be added to the period of service in inferior categories or classes, as the time spent in actual service in the latter categories or classes, and shall give to said officers the privilege of occupying a higher place among the employees of the same class.

CHAPTER II.

ENTRANCE.

ART. 10. Entrance and promotion into the service of the general administration of State in the department and its Peninsular dependencies and in the colonial provinces shall be adjusted to the following rules, however without prejudice to the other provisions established by the present decree law:

1. Suspended officers may return to active service in an employment of the same category and class as that which they filled previously.

2. No office can be entered except through the fifth class of officers of administration. Persons holding academic or professional degrees or having pursued higher studies may enter the service as officers of administration of the second class.

3. For promotion from one class to another two years of service in the class immediately inferior are required, besides a proportionate number of years spent in the service of the State according to the following scale:

For promotion to chief of administration, ten years; for promotion to chief of bureau, eight; for officers of administration of the first class, five; for officers of administration of the second class, four; for officers of administration of the third class, three; and for officers of administration of the fourth class, two.

The officers of the civil and economic administration of state holding academic degrees of higher studies or professions may be promoted to officers of administration of the first class after completing two years of service as officers of the second class, and to chiefs of bureaus of the third class after completing two years of service as officers of the first class.

ART. 11. To obtain the office of a superior chief of administration the candidate is required to be or to have been a senator or deputy to the

Cortes during the period of two general elections; to have to his credi ten years of service in the civil administration, or to have drawn a salary equal to or higher than that of 8,750 pesetas.

ART. 12. To be appointed governor of a province in the island of Cuba or in the Philippine archipelago, when military authority over the territory is not vested in said office, the following qualifications are required:

1. To have filled for any time offices with the category of chief of administration of the first class, or to have filled for more than one year offices with the category of chiefs of administration of the second class, or for more than two years similar offices of the third or of the fourth class.

2. To be credited with more than fifteen years of administrative service in the State or in the province, provided that the last office has been of a category higher than that of a chief of bureau of the third class.

3. To have been a deputy to the Cortes or to have been an elected senator during one full term of the legislature.

4. To have been elected a provincial deputy at least twice, and to have taken possession and filled said office without leaving it by resignation.

5. To have been an associate justice of any audiencia or *teniente fiscal* for a period of more than two years, or to have filled an office in the judicial service higher than the two above mentioned.

6. To have filled the office of alcalde in the regular manner for more than two years in capitals of provinces of the first or second class, or to have been a member of a provincial commission for the same length of time.

7. To have been secretary of administration for more than two years in first-class provinces.

8. To be or to have been a secretary appointed through a competitive examination in a provincial deputation of first-class provinces for the period of four years.

Appointments to be governors of provinces may also be given to soldiers who have spent twenty-five years in the military service, ten of which in the actual service as commanders; and in the Philippine Islands persons who are or have been political military governors in said territory for two years with the minimum rank of major of the army or its equivalent in the naval service, and to those who for an equal period of time have served until the publication of the Royal decree of March 5, 1886, in the capacity of mayors (*alcalde mayor*) with the category of judge of first instance of the promotion or of the final category.

If the Government learns that any of the colonial provinces is subject to circumstances requiring special precautions for the sake of national unity, or in such an abnormal condition that special qualifications are necessary to satisfy the exigencies of its government, and when it is thought that there are no persons among the officers referred to in this article possessing the necessary ability for the case, the office of the governor of said province may be conferred upon a person of acknowledged fitness and patriotism after the approval of the council of secretaries, which shall decide upon the advisability of adopting such measures.

ART. 13. Residents of the islands of Cuba, Puerto Rico, and the Philippines who have been discharging duties as provincial deputy, as alcalde, or as member of the council in the capital of a province, or who have belonged in the capacity of members of administrative councils

or of the existing consultive or auxiliary boards of administration of a central character, may be appointed chiefs of administration of any class and in the administrative service of the respective provinces, except in the custom-house service. For the offices of chiefs of bureaus of the said territories in similar circumstances the appointment may be given to persons who have belonged to the provincial and local boards of that same class, or who have been *alcaldes* or councilmen of a municipality which is not a capital, provided that said persons possess the following qualifications:

Of having resided in the territory in question for eight years previous to appointment.

Of having discharged for the period of four years any of the offices enumerated in this article without having resigned from the same.

Of having discharged in a proper case the duties of a provincial deputy, alcalde, or councilman, by virtue of a popular election.

ART. 14. The legal qualifications stated in the preceding article for offices of chiefs of administration, or chiefs of bureaus, does not grant under any circumstances the privilege of seeking employment of a higher or inferior category.

The time spent in service in the capacity of a provincial deputy, member of a provincial commission, alcalde, or councilman, by virtue of a Government appointment, shall not be taken into account for the acknowledgment of said legal qualifications.

Said legal qualifications shall be shown by documents in proceedings before the appointments are made.

The appointees shall not be entered in the general graded lists until after they have served in the offices conferred on them for two years, deducting the time taken for leave, except when they have a right to be included in the graded list for other causes.

ART. 15. The admission to the service of the general administration of state in the colonial provinces, with the category of officer of administration of the third or fourth classes, may be granted to the persons possessing all of the qualifications mentioned below:

To be at least 21 years of age.

To have a degree of bachelor of arts.

To have studied and have been certified in having successfully passed in official universities the courses of political law, administrative law, political economy, public treasury, and obtained in said courses a standing of a grade higher than the grade "Passed."

To have studied and have been certified in having successfully passed at the Central University a course on colonization endowed by the colonial department, and obtained in said course a standing of a grade higher than the grade "Passed."

Appointment shall not be granted until due certification is made with proper documents proving the above qualifications.

ART. 16. The appointment of officers of the fifth class of the department and its peninsular dependencies shall be granted to persons who, besides being at least 20 years of age, possess the following qualifications:

Of having discharged creditably a similar office in the public administration, or having filled for two years the office of a candidate in the same manner, or holding the degree of bachelor of arts, or a professional degree of any other kind.

ART. 17. Appointment of officers of the fifth class in the colonial provinces shall be made by the respective governors-general, who shall immediately report on the matter to the department, in order that said appointments may be confirmed by a Royal order.

The appointment shall be made with a statement of qualifications o the appointee, said qualifications being duly proven to the departmen by the proper documents.

The following shall be the qualifications:

1. Residence in the territory in question for two years prior to th date of appointment.

2. To be at least 18 years of age.

3. To have creditably discharged a similar office in any dependency of the central or provincial administration, or to have filled creditably subordinate offices as a candidate or clerk with similar good conduct, with a minimum annual salary during four years, amounting to 300 pesos in Puerto Rico and the Philippines, and 600 pesos in Cuba, or holding a degree of bachelor of arts, or a professional degree of any kind.

ART. 18. The secretary of the colonies need not approve an appointment if there are grounds for such action, but the appointee shall draw the salary for the time during which he has filled his office.

The denial of approval shall duly give the reasons therefor, and shall be binding, relative to drawing salary, eight days after the corresponding order has been received in the General Government.

In the latter case the appointment of a governor-general shall be without legal effect for the computation of the length of service or for the granting of a category.

ART. 19. Any appointment of an officer of the fifth class made by a governor-general of persons who have not previously shown the qualifications required by article 17, shall be considered null, and any salary that has been paid to such appointees before they have proven their qualifications, shall be charged to the disbursing officers.

ART. 20. The royal order confirming the appointment of an officer of the fifth class shall have a retroactive legal effect to the date on which the appointment was made by the governor-general.

ART. 21. The appointments to the positions of treasurers-general of the treasury, provincial treasurers, depositaries and collectors of the treasury branch of service, of any class and category, shall be made by the colonial secretary at the suggestion of the respective governors-general with the approval of the *intendentes*.

The persons who possess the qualifications specified in article 10 of this decree, and who, besides, offer and execute the bond required for the office, shall be recommended for appointment.

Recommendations for appointment shall be accompanied by documents certifying that the above requirements have been complied with.

Said appointments shall not be included within the order of the series of succession established by article 25.

ART. 22. In order to properly fill the offices of candidates, clerks, and other subordinate employees of administrative offices, the respective governors-general shall draft and recommend to the colonial department the proper regulations, designating the offices to be filled by each authority in the territory subject to their jurisdiction, and providing that one-third of said offices be given to the persons who have been discharged from the army or the navy with a good record of military service and who have settled in the country.

ART. 23. The employees and subordinate officers of the public order or of the police shall be appointed without restriction by the governors-general, but shall not enjoy the benefits conferred by this decree-law.

The same rule shall be applied to employees of the garrison, with the exception of chiefs of garrison establishments, who shall be appointed

by the secretary of the colonies, outside of the series of succession, but subject to the requirements necessary to solicit employment of the same category and class as that granted to the commanding chiefs of colonial garrisons.

ART. 24. Until otherwise decreed, entrance and promotions of civil officers serving in the Spanish possession of the Gulf of Guinea shall be by means of an unrestricted selection. In order to be included in the general graded list and to enjoy the privilege conferred by this decree-law, two years of actual service with permanent residence in the colony shall be required of officers of administration in the last category, and four years of chiefs of bureaus, or in all, six years of actual service with a permanent residence in the colonies, the time of leaves of absence being deducted.

Officers of any class or category who are accompanied in these colonies by their wives or children shall enjoy during their residence in the colonies an increase of 10 per cent of their total salary.

CHAPTER III.

PROMOTIONS AND VACANCIES.

ART. 25. Entrance as well as promotions in the service of the general administration of state in the colonial department and its peninsula and colonial dependencies shall be adjusted, besides the provisions contained in the preceding chapter, to the following series of succession:

1. Of seniority among active employees.
2. Of seniority among suspended officers.
3. Of selection among active employees.
4. Of selection among suspended officers.
5. Of unrestricted appointment with the conditions fixed for entrance in the preceding chapter and in article 10 of this decree-law.

ART. 26. In the first series of succession promotions shall be given to the active employees occupying the first places in the classes immediately inferior to that in which the vacancy occurs, up to officers of the fifth class, inclusive.

ART. 27. In the second series of succession, appointments shall be given to the suspended officers who hold the category and class equal to that of the office to be filled and occupy the first place in the respective graded list.

Should there be no candidates holding the category and class of the vacancy, the appointment shall be bestowed on the persons of the category and class immediately below, who occupy the first place and have to their credit two years of actual service in the same.

Should there also be no such candidates, the series of succession shall be declared to be passed over and the vacancy shall be filled by the third series.

ART. 28. In the third series the appointment may be granted to an active employee included in the category and class immediately inferior to that of the vacancy, and possessing the following qualifications:

1. Of being included in the first half of the list of officers of his class.
2. Of having to his credit two years of service in his class.
3. Of having to his credit the full number of years that are required by article 10 of this decree-law for the various administrative categories.
4. Of being at the time of appointment in the locality of his office.

Appointments in this series of succession to serve in the colonial provinces and possessions beyond the sea, may also be granted to offi-

cers of the civil administration in the peninsula or of the colonia department and its dependencies in Madrid, to whom shall be grante promotion, without regard to the time of service in their category an class, and with two promotions if they lack less than six months o being qualified for promotion in the Peninsula by selection.

ART. 29. In the fourth series of succession appointment may b granted to a suspended officer appearing in the graded list in the cate gory and class equal to those of the vacancy, or else with the one immediately inferior.

In the latter case the suspended officer must have the following qualifications:

1. He must be included in the first half of the list of officers of his class.

2. He must have to his credit two years of service in his class.

3. He must have to his credit the full number of years which are prescribed by article 10 of this decree law as a qualification for seeking appointment in the various categories.

Preference shall be given to suspended officers possessing the above qualifications to those who have been suspended with pay, and, in their default, to officers suspended on account of abolition of their offices, or on account of reforms.

Appointment in this series of succession for offices in the colonial provinces and possessions may be granted also to suspended officers of the civil administration of the Peninsula, or of the colonial department and its dependencies in Madrid; and a promotion shall be conceded them without regard to the time which they have to their credit in their class and category, and with two promotions if less than six months are lacking for their reinstatement with promotion in the Peninsula.

ART. 30. In the fifth series of promotions vacancies shall be filled in the following manner:

If the vacancy is of a category inferior to that of a superior chief of administration and of a higher category and class than those of an official of administration of the second class, the appointment shall be granted to an active or passive officer of the general administration of state in the Peninsula, or of the colonial department and its dependencies in Madrid, or of special branches of the service or bodies which belong to the class immediately inferior to that of the vacancy or to its equivalent in a special branch of the service or a special body, no regard being paid to the length of time spent by said officer in the class in question. Appointment may also be made of officers of the same branches of the service who have filled an office inferior by two classes or grades, and who have to their credit one year and a half in the service. In either case the full number of years of service shall be required, as prescribed by article 10 of this decree law, for a transfer from one category to another.

If an office of administration of the second, third, or fourth class is vacant, it shall be filled in the manner described in the preceding paragraph, or else the appointment shall be given to persons possessing the qualifications which are required by articles 10 and 15 of this decree law for aspiring to said categories and classes, although the persons in question have either never been employed by the State, or have discharged duties of an inferior class.

The advantages obtained by virtue of what is authorized in this article and in the two articles immediately preceding it shall not be considered as granted with an office, so far as the colonial provinces are

concerned, until the office obtained shall have been filled for two years, deduction being made for leaves of absence.

After this condition shall have been complied with by the employee, he may be transferred with the category and class he has acquired to the general administration of state of the Peninsula or to the colonial department or its dependencies in Madrid.

ART. 31. If any member of the council of state, either active or suspended, is appointed without retaining his membership in the council to fill the office of a superior chief of administration in the colonies, he shall draw 3,000 pesetas of salary fixed for the office, which salary shall not be affected by the total amount provided for in the budget.

ART. 32. The personal salary drawn, or the highest salary which has been drawn by an officer from a special branch of the service or body who is about to be appointed to fill an office in the civil administration of the colonies, shall serve as a basis for granting to said officer the category and class belonging to him in accordance with the categories and classes included in the general graded lists of the employees of the general administration of state.

ART. 33. The employees rendering services in the colonial department and its peninsular dependencies may renounce in advance the promotions to offices in the colonies which may belong to them by right of seniority or appointment, said renunciation being made in a request drawn to that effect.

The employees of the Antilles may likewise renounce promotions to offices in the Philippine Islands and *vice versa*.

Should an officer renounce a promotion for any other causes he shall be declared suspended, provided that the office does not require a bond.

ART. 34. Suspended officers who have been given an employment not requiring a bond, or one of a category and class inferior to that of the highest office which they have discharged, and who have renounced or have not taken possession of their office in the time fixed by the regulations, shall appear in their graded list in the last place of their class.

ART. 35. When no candidates are found in the series of succession from which a vacancy should be filled the vacancy shall be filled from the series next in numerical order. When the fifth series of succession is made use of the first series shall be next utilized.

ART. 36. The colonial department may renounce the right to fill vacancies by the fifth series of succession whenever it approves filling said vacancy by the first series.

ART. 37. Claims may be made in administrative litigation by the persons who consider themselves to be wronged by appointments made with modifications of the series established by this decree law, except when such modifications are authorized by the preceding article.

CHAPTER IV.

GRADED LISTS.

ART. 38. In the month of May of the year 1891 the assistant secretary's office of the colonial department shall publish provisionally the two general graded lists referred to in article 3.

Said graded lists shall be binding until the formation of the final ones, to be published on June 30, 1892. The latter shall serve as a basis for the annual ones to be drafted and published thereafter in conformity with article 41.

ART. 39. Employees shall be included in the graded lists within each category and class in strict order of seniority. Public officers in offices

inferior to those which they have reached in their careers shall be given the first places in the graded lists of the respective classes in which they appear as in active service. A greater number of years in service, and in cases of equality in this respect, a greater age shall determine the order of preference to be granted to officers of equal seniority.

Graded lists shall not contain lists of employees subject to administrative proceedings or trials before the date of this decree law until said proceedings or trials come to a final decision with a declaration therein authorizing the inclusion of said employees in the graded lists.

ART. 40. After the graded lists are published persons who have a right to be included therein may complain of the place assigned to them in the same, or may request to be included if they have been omitted.

Complaint shall be made within the period of one month by parties residing in the Peninsula, three months by those residing in Cuba and Puerto Rico, and six months by those residing in the Philippines, or in the Spanish possessions in the Gulf of Guinea. After the period assigned for making complaints has elapsed no claim shall be received.

ART. 41. Beginning with the year 1893 annual graded lists shall be published in the month of July of each year, showing the status of the service as it appeared on the 30th of the preceding June.

ART. 42. The colonial department shall issue the necessary regulations in order that the formation of the provisional general graded lists to be published in May, 1891, may be furnished by the higher authorities of the colonial provinces and possessions, and by the active and suspended officers residing in the colonies or in the Peninsula.

CHAPTER V.

SUSPENSIONS.

ART. 43. Suspensions shall be decreed unrestrictedly by the authorities which made the corresponding appointment. The governors-general shall report to the Government on the causes of suspensions decreed by them.

Notwithstanding this provision, the secretary of the colonies may decree the suspension of officers of administration of the fifth class, whose appointment is made by the governors-general, whenever such suspension is demanded by the good of the service of the State.

A suspended officer shall be entered in the proper place in the general graded list of suspended officers.

ART. 44. If a suspension has been caused by serious offenses committed by an employee in the exercise of his duties, he may be reduced in the graded list upon the recommendation of the respective governors-general, after a decision of the jury provided for in article 82, and after the other formalities regulating the procedure of this jury, which are established in articles 82 and 84 of this decree law.

ART. 45. The employees of the public administration who are prosecuted criminally at the instance of some person or otherwise, shall be suspended from their duties from the moment in which said complaint is made. Such officers of the colonial provinces shall have a right to draw only one-fourth of their salary for living expenses, said pay in no case exceeding 1,000 pesos, until a definite decision is rendered.

The pay for living expenses referred to in this article is limited only to the cases where an officer is tried for acts relating to the office which he fills in the territory under the jurisdiction of the colonial courts

taking cognizance of the cause, and it shall cease when the officer in question shall have been condemned in any other cause.

ART. 46. After a sentence has been pronounced either condemning or acquitting, or staying proceedings, a decision shall be made in an administrative way after hearing the council of state, upon the standing of the employee, his final reduction or retention in the service, the time of service, and other administrative matters.

CHAPTER VI.

TRANSFERS, EXCHANGES, LEAVES, AND COMMISSIONS OF THE SERVICE.

ART. 47. Every employee of the colonial provinces may be transferred within the islands of Cuba, Puerto Rico, and the Philippines, respectively, to officers of a category and class equal to the category and class of the office which he fills, if the transfer would prove of utility to the service.

Transfers of officers serving in the Antilles to the Philippines and *vice versa* can be made unrestrictedly only for the interest of the service, when the employee to be transferred has completed two years of continuous residence in any of said territories.

ART. 48. Officers are hereby forbidden to discharge duties other than those which properly belong to their regular offices, except in cases of substitution or in case of a greater usefulness to the service. In these cases the governors-general shall recommend the transfer beforehand, which shall in no case be made without the approval of the colonial department; or, if made, the payment of salary which might otherwise be due to the officer transferred, either for his regular or for the incidental duties is prohibited, under the liability of the disbursing officers.

ART. 49. Public officers discharging their duties in the colonial provinces may obtain temporary leaves for Europe, subject to the following rules:

1. It shall be an indispensable condition for requesting leaves to have remained in active service in any of said provinces three consecutive years without interruption.

2. The maximum time of leaves which can not be extended shall be adjusted according to the following scale: In cases of officers who have complied with the condition of the preceding rule, six months for officers of the Philippines and African possessions, or four months for officers of Cuba and Puerto Rico; in cases of officers of the same possessions who have remained in active service as specified in rule 1 for six consecutive years—nine and six months, respectively; in cases of active, uninterrupted service reaching ten consecutive years, twelve months and eight months, respectively, for the former and the latter officers.

3. A leave obtained under any conditions deprives the officer making use of it of the right to request another leave until the conditions specified in rules 1 and 2, as may be the case, have been complied with again.

4. Leaves of absence shall be requested by the parties interested in due form and medium to the secretary of the colonies.

5. Only in cases of serious sickness duly proven, which endangers the life of the employee concerned, can the governors-general advance leaves for Europe for one-half of the time respectively fixed in rule 2, said leaves being granted after due investigation made by the immediate superiors of the employee in question, or, in cases of employees of the treasury, after a recommendation of the *intendente* or director-general of the service.

6. In drafting the papers which show the causes calling for a leave, as well as for the payment of the salary during the time of the leave, according as to whether it has been granted on account of sickness or for personal reasons, the prescriptions of the preceding rule shall be taken into account, and, further, that a leave must invariably be passed upon when the officer requesting it proves his poor health; and that such officer, from the day on which he ceases to perform his duties until the day on which he returns to them, shall draw only the personal salary corresponding to his office.

ART. 50. Leaves for any points in Asia and America that are not included in the colonial provinces shall be granted by the governors-general for a period of forty-five days, with an extension limited to twenty-two days, which may be granted in cases of sickness duly proved; and officers obtaining such leaves shall draw both the pay and the extra pay corresponding to their office.

When leaves of absence are granted for personal reasons, their time shall in no case exceed forty-five days; and an officer making use of such leave shall not draw any salary.

ART. 51. Leaves for points within the same islands in which the colonial officers requesting leaves render their services, shall be granted by the superior authorities concerned, and shall be subject to the following rules:

1. Colonial employees can not absent themselves from the town in which they discharge their special duties without a leave granted them by the competent authorities. An employee absenting himself without leave shall be considered as resigning his office, and shall be declared suspended, without prejudice to the other liabilities that may be incurred.

2. Leaves must be invariably solicited in writing, and through the immediate superior. When solicited on account of sickness a medical certificate must corroborate the statement.

If the proofs presented by an officer in asking for a leave are in the opinion of his immediate superior insufficient, the latter may demand their amplification.

In a petition for a leave the employee soliciting it must mention the leaves which he has enjoyed during the preceding three years.

3. The immediate superior, in passing upon a leave, shall state his opinion on the necessity of the employee to take it, and on the possibility to grant it without prejudice to the service.

4. Leaves on account of sickness shall be granted with full pay for one month only, and with one-half of the pay for fifteen days more. Leaves granted for other reasons shall be without pay.

5. A memorandum shall be made in the record of service and in the personal record of each employee of each leave he takes.

6. An employee obtaining leave every year for three consecutive years, can not obtain another during the next three years.

7. Not more than one-fifth of the personnel of the same office or of the same public service can make use of leaves at the same time.

Chiefs of the dependencies, under their own liability, shall not allow any employee to make use of his leave if the full number of employees allowed are on leave and the employee in question would cause that number to be exceeded.

8. A leave granted to an employee shall be void if said employee is transferred to another office before he makes use of the same, and it shall be necessary to obtain a new order granting a leave to said officer before he can make use of it in his new employment.

ART. 52. Colonial authorities granting leaves to public officers appointed by the department shall make a report to the department on all such leaves, in order that they may be included in the proper personal records.

ART. 53. The period of residence referred to in rules 1 and 2 of article 49 for obtaining leaves shall not be considered as interrupted by the granting of leaves for which said period is fixed, or by a voyage and residence in the Peninsula to which the officers are compelled who, by the decision of the Government, are transferred from the Philippines to Cuba and Puerto Rico, and *vice versa*, or from African possessions to any other colonial provinces.

ART. 54. It is absolutely forbidden to authorize a residence of colonial officers after the period of leave allowed by the regulations has elapsed. The officers transferred from one province to another, according to the statements of the preceding article, may remain in Europe during one month, with a privilege to draw the salary of their new office from the date of their embarkation in the province of their former office, provided they take possession of their new employment.

If this time has elapsed and said officers should not continue their voyage, it shall be construed that they resign their new office, except when they have been authorized by the Government to remain thirty days more on account of sickness, duly proven by proper documents, in which case said officers shall draw their personal salary during the period extended by the authorization.

ART. 55. If officers to whom leaves are granted make a direct voyage to the Peninsula, or any other point of Europe, Asia, or America, the commencement of their leave shall be computed from the day of their landing, which shall be certified to by the captain of the port of landing, or by a Spanish consul, respectively, according as to whether the place of destination is in the Peninsula or outside of it.

If the voyage is not direct, the time of the leave shall be counted from the date of embarkation in the colonial province from which the officer in question has come.

ART. 56. In fulfillment of the obligations which must be complied with by an officer during the time of his leave the following rules shall be observed:

1. Employees making use of leaves must obtain certification of their return embarkation before the expiration of the time allowed in their leaves; this obligation shall be effected by means of a certificate of the captain of the port of embarkation in the Peninsula or by the Spanish consul abroad, from which they begin their voyage.

The date of arrival at the place of their office shall also be certified to by the captain of the port.

Duplicates of both certifications shall be issued, one addressed to the colonial department and the other to the *intendente* or to the director of the treasury of the province in which said officers serve.

2. Any detention or voluntary interruption of the return voyage begun for the purpose of returning to the office, after having enjoyed a leave, shall cause the loss of the employment and of the personal rights acquired.

3. Whenever, at the expiration of the time allowed for leaves, the employees making use of the same have not reembarked for the return voyage to the places of their offices, they shall be declared suspended unless they assign as a cause for such action poor health, duly proved by proper certificates, or any other duly established and legitimate cause, preventing them from returning to the colonial province from which they came.

If any of the two above circumstances is lacking, said officers shall be considered as included in the preceding rule.

In either case said officers shall incur the penalties established in said rule from the date on which the time allowed for the leave has expired.

4. Leaves granted for Europe and between Asia and America shall become void when not made use of within two months after being communicated to the officers concerned. Leaves granted for points within the same island or for neighboring islands, either in the Antilles or in the Philippines, shall become void when not made use of within one month after being communicated to said officers.

Leaves shall likewise become void, without regard to whether the employees to whom they are granted make use of them or not, if said employees obtain new offices.

5. Transportation charges shall in no case be allowed to employees on leaves, without regard to the cause or destination for which said leaves have been granted.

ART. 57. Commissions for the service in the Peninsula shall be conferred only for extraordinary and urgent necessities of the State, accredited by a written communication of the superior colonial authorities if the conferring of the commission comes from said authorities, or in a royal order if it comes from the colonial department.

ART. 58. Said concessions shall be conferred only for an unextendable period of four months, counting from the date of landing at a peninsular port after a direct voyage from the place at which the officer given the commission has been employed, and it may be conferred on *intendentes* or directors of the treasury, directors or subdirectors general of the civil administration, presiding judges of audiencias and *fiscales* of the same, and of local courts of administrative litigation departments, except treasurers and accountants who are intrusted with general services which extend to the whole territory, respectively, of the islands of Cuba, Puerto Rico, and the Philippines, with a right for the entire duration of the commission to the personal salary of the regular office and an extra pay amounting to one-half of that salary, together with traveling expenses both ways, duly proved by the proper vouchers.

ART. 59. Officers coming to the Peninsula from the aforesaid provinces in commission for the service shall, in a note of presentation at the colonial department, certify that they made a direct voyage. If they fail to do so, they shall lose the right to traveling expenses at the expense of the Government and to the salary which is allowed them in the special services in commission, and they incur an obligation to refund to the public treasury the amount advanced to them either for transportation or as salary. In such cases they must make a return voyage to the place of their regular offices within the unextendable period of thirty days, counted from the date of their landing, during which period they shall not draw any salary.

ART. 60. Extraordinary commissions for the service may also in special circumstances be conferred for places within the colonial province in which the employee intrusted with the commission fills an office. If transferred to a place outside of his regular residence, said employee shall have a right to his pay and extra pay and an additional pay amounting to one-half of his total salary for the entire duration of the commission, which shall never exceed three months. He shall also be allowed traveling expenses both ways.

ART. 61. Hereafter no attachment shall be ordered of colonial officers to the colonial department or other peninsular dependency of the administration.

ART. 62. Any officer coming to the Peninsula in violation of the conditions established in this decree, on leave or in commission for the service, even if said leave or commission has been granted through an error or the neglect of his hierarchical superiors, shall be discharged from the service, and the order of the discharge shall have a retroactive effect to the date on which the employee in question ceased to perform the duties of his office.

CHAPTER VII.

TRANSPORTATION AND DATES OF EMBARKATION.

ART. 63. Public officers destined to the colonial provinces, to whatever service they may belong, shall have a right to allowances for transportation both ways for themselves and their families at the expense of the State, in the form and amount fixed by the following articles.

ART. 64. For the purposes of the preceding article those employees are considered as public officers who have been appointed by a royal decree or a royal order, with the exception of officers of administration of the fifth class, and whose salaries are provided for in the general budgets and are paid from the treasuries (*cajas*) of the colonial provinces.

ART. 65. In allowing transportation expenses the following persons shall be considered as constituting the family of an employee: A legitimate wife; legitimate, acknowledged, natural, and adopted children, when not freed from paternal authority; and the widowed mother taken into the house of and maintained by the son.

ART. 66. Transportation charges at the expense of the State for public officers shall be adjusted to the following scale:

In the transportation lines of the Antilles—

1. Full transportation of the first category of the first class for chiefs of administration or their equals in category.
2. Full transportation of the third category of the first class for chiefs of bureaus or their equals.
3. Full transportation of the second category of the first class for officers of administration and their equals.

In the line of the Philippines—

Full transportation of the first class until the chartered company establishes mail steamers in such categories as appear in the rates of the Antilles line.

For Fernando Pö—

Full transportation of the first class in the form actually established.

ART. 67. The superior chiefs of administration and the right reverend archbishops and the very reverend bishops shall be given on board the ships an apartment with three berths besides the one corresponding to the regular passage, it being understood that for the apartment of three berths the chartered company of mail steamers shall be paid one-half of the price fixed in the rates for the public, according to the order of the Regent of the Realm of November 15, 1869, and for the other half there shall be paid what is stipulated in article 53 of the contract now in force.

ART. 68. For the transportation of persons constituting the family of a public officer the State shall pay to the company of mail steamers as follows:

Twenty-five per cent of the transportation charges of a passage equal to that of the employee for each of his children, and 50 per cent for the legitimate wife and for the mother of said officer.

ART. 69. For the children of an employee who are under 5 years of age no transportation charges shall be paid by him to the company.

If his children are over 5 and below 10 years of age, the officer shall pay to the company from his own money for each child 25 per cent of the price of the official transportation of the same category as that which is given him personally.

If they are over 10 years of age, he shall pay to the company in the same manner 75 per cent of the transportation charges of a passage equal in amount to the charges paid for his own transportation.

For the transportation of his wife or his mother said officer shall pay 50 per cent in the same manner as specified in the preceding paragraphs.

ART. 70. The Government shall also make allowance for transportation of employees and their families transferred from one colonial province to another, or from the latter to the peninsula, in the form and to the persons specified in the preceding articles.

Officers appointed to the capitals of the Mariana and the Caroline Islands, and *vice versa*, as well as their families, are also entitled to transportation from Manila to the same, and *vice versa*, at the expense of the Government in the established form.

ART. 71. Expenses of transportation in the manner and form established in the foregoing articles shall be allowed only to the persons who have made a direct voyage in the mail steamers of the chartered company of the sea mail service.

Those who have not made a direct voyage, or if they have made it on other lines of transportation, it shall be construed in each case that they have traveled at their own expense and that they have renounced the allowance for transportation.

ART. 72. The colonial department shall publish the instructions for establishing in a definite manner the time and form in which allowance for transportation is to be made; the manner of qualifying the right to obtain the same; dates within which claims may be made and authorities to whom they should be made; nullity of that right; regulating, in addition, everything which pertains to this branch of the service of State and is related with the provisions of article 53 of the contract of the sea mail services, approved by the counsel of secretaries on November 17, 1886, ratified by the Cortes, and published June 26, 1887.

ART. 73. The periods within which public officers appointed to colonial provinces must embark shall be limited to a period of forty-five days, which can not be extended, for officers appointed to the islands of Cuba and Puerto Rico, and sixty days for those appointed to the Philippines or to the Spanish possessions of the Gulf of Guinea.

These periods shall be counted from the date of appointment.

The employees transferred from one colonial province to another, or from the latter to the peninsula, shall begin their voyage within the maximum period of sixty days, counted from the date on which the Governor-General attaches his approval to the order conferring the new office.

Those coming from the Philippines or from the Spanish possessions of the Gulf of Guinea and going to Cuba or Puerto Rico, or *vice versa*, may remain in the peninsula during the time allowed in article 54 of this decree.

ART. 74. Should any employees take time in excess of the periods allowed in the preceding article for their respective cases, they shall be declared suspended, but a new appointment may be reserved for them if opportunity presents itself.

CHAPTER VIII.

SUBSTITUTIONS AND TEMPORARY EMPLOYMENT.

ART. 75. Vacancies that may occur for any causes whatsoever in the service of the general administration of state of the colonial provinces, not calling for security, may be filled temporarily by substitution, according to the regulations.

For the convenience of the service in special cases, governors general may appoint to replace the chief of a dependency an officer with sufficient qualifications, serving in the branch in which the vacancy occurs, provided that he is not of the same office.

An officer has sufficient qualifications who shall be equal in category at least to a substitute appointed according to the regulations who in normal conditions would be called upon to replace the regular employee in the office in question.

Offices of superior chiefs of administration may be intrusted also to civil employees occupying a position in the category of chief of administration of the first class, without regard to the office and the branch of the service to which said position corresponds; but in such cases governors-general shall limit themselves to reporting the vacancy by telegraph to the colonial department, in order that the latter may make an appointment.

ART. 76. No substitute shall receive a salary other than that of his regular office.

In the special case provided for in the preceding article a substitute shall draw, besides the personal salary of his office, the extra pay of the office he substitutes, or the expenses of representation if the budget provides them for said office.

Governors general may also fill provisionally other vacancies which occur in the various dependencies of the State in the respective provinces and which can not be filled by substitution according to the regulations, because professional degrees or special ability are required for their filling, by granting appointment to active or suspended officers, or, in default of such, to private individuals having the necessary qualifications, when the exigencies of the service demand such action.

In a similar manner positions which can not be substituted according to the regulations, because there is no other position in the same office, and positions which remain without employees after the filling of vacancies in the manner prescribed in article 75 may be filled temporarily with active or suspended officers or with private individuals, when such action is demanded by the considerations of benefit to the service.

In such cases of original vacancies and in cases of vacancies arising from and produced by filling other vacancies the officers concerned shall enjoy either only the extra pay or both the pay and the extra pay fixed in the budget for the office which they fill, according to whether it is vacant temporarily or actually.

ART. 78. Vacancies in offices calling for security shall be filled with officers of the active or the passive lists, who shall tender the proper security.

If a position calling for security is actually vacant, the provisional appointee shall draw the pay and the extra pay of the office he discharges; and the salary shall serve as the basis of regulating his passive qualification whenever he draws said salary for more than two years, even if not consecutively, and when he previously filled as an incumbent an office of equal category and class.

If the vacancy is temporary, the appointee shall have a right t draw only the extra pay of the office in which he replaces a regula incumbent.

ART. 79. Every temporary filling of offices of royal appointment shal be submitted for the approval of the colonial department.

ART. 80. The time spent in temporary service by suspended officer shall be taken into account in their passive classification, provide that said temporary appointment has been approved by royal order.

CHAPTER IX.

OFFENSES OF EMPLOYEES AND THEIR PUNISHMENT.

ART. 81. Offenses against discipline committed by employees of the administrative branch of the service in the colonies shall be punished by a deduction from their salary of a sum not exceeding the pay for fifteen days. Such offenses shall be decided on and punished by the chief of the respective dependency, after an oral hearing of the employee, with a right of written appeal to the higher chief of the branch, who after due investigation shall make a decision which can not be appealed from.

Five offenses against discipline shall be cause for discharge of the employee committing them.

ART. 82. Serious offenses shall be punished with suspension of pay from one to three months and with discharge from the service. A serious offense may be a cause for the immediate discharge of the employee committing it. Three suspensions of salary for serious offenses shall always result, as an inevitable consequence, in a discharge, without necessity of further proceedings.

Without prejudice to the powers conferred on chiefs of central offices and of dependencies, for disciplinary punishment of serious offenses, said offenses shall be decided on in cases in which such action is commended, by a jury composed of the superior chief of the branch, two chiefs of the dependency in which the employee renders his services, and two employees of the category immediately superior to that of the employee who committed the offense.

If in the dependency in which the offender serves the two chiefs mentioned above are lacking they shall be selected from another dependency.

ART. 83. Said jury must meet and a sentence shall be imposed upon an employee, when a public accusation is made against the latter, when said action is requested by his chiefs, when it is ordered by the governor-general, or when three judicial attachments have been decreed against the salary of that employee.

The president of the jury shall state verbally to the defendant the charges that are brought against him; and the latter shall refute the charges in the same way; and after due explanations and the evidence necessary for the decision, the defendant shall retire and the jury shall deliberate and vote by ballot with black and white balls.

If the explanations and evidence can not be obtained at once, the jury shall fix a day for pronouncing the sentence.

Discharge from the service effected in this manner shall be final.

If in the investigation thus effected there are grounds for presuming that a crime has been committed, the proceedings shall be transmitted, without loss of time, to the proper courts of justice.

ART. 84. The decisions of the jury shall always contain a statement of reasons, and a report on all of them shall be given to the colonial department. If the latter is of the opinion that the decision of the jury is not of sufficient severity, said department is at liberty to order that the delinquent officer be discharged from the service.

CHAPTER X.

REWARDS.

ART. 85. The employees of the colonial administration have a right:

1. To receive 5 per cent of the sums embezzled or taken away from the public treasury which, unknown to the administration, shall be discovered and refunded through their agency, except in the cases in which the laws in force give them a right to a greater percentage.

2. To be rewarded for their extraordinary services with honorable mention, decorations, grant of a category higher than their actual one, and pecuniary rewards granted for a time, or for life, to an amount which may reach 10 per cent of their entire personal salary. In order that the latter reward may be given, it is necessary that the service which is the object of reward be proven by proper proceedings, that it be recommended by the superior chief of the employee, and be favorably commented upon by the council of state.

CHAPTER XI.

OBLIGATIONS OF EMPLOYEES.

ART. 86. Colonial employees shall be obliged:

1. To observe irreproachable conduct in their official relations with the public and with their colleagues, and in relations of any kind with their superiors.

2. To come to the office at the assigned hours and not to leave until the chief of the dependency permits them to do so.

3. To fulfill with zeal, diligence, and eagerness all the duties intrusted to them.

4. To keep secret all matters referring to the transaction and disposal of affairs.

5. Not to practice law or act as agents for any persons on any occasion, in any place, or in any manner.

CHAPTER XII.

GENERAL PROVISIONS.

ART. 87. Every appointment made by royal decree shall be published in full in the *Gaceta de Madrid* within the period of twenty days, computed from the date on which said appointment is made.

The appointments made by royal order shall be published every fifteen days in full in the same Gaceta within the period of twenty days following the 15th and 30th of the month in which the appointments are made, stating the series of succession to which said appointments correspond.

ART. 88. Of each four vacancies of unrestricted appointment that may occur in each one of the categories and classes included in the personnel of the secretary's office of the colonial department and its dependencies of Madrid, one must indispensably be filled with an officer who serves or has served in the islands of Cuba, Puerto Rico, the

Philippines, or the Spanish possessions of the Gulf of Guinea, an who, besides possessing the legal qualifications required for the offic in question, has to his credit two years of service in those provinces o possessions in an office of the same or higher category and class, deduc tions being made for leaves granted for Europe.

ART. 89. The provisions regulating passive rights and privilege. established before the publication of the law of June 29, 1888, oı colonial officers, as well as those conceded to the widows, orphans, anc mothers of said employees, are hereby preserved in full force.

An equivalent of two monthly payments of the total salary to the representatives of colonial employees dying while filling an office, as granted by base 7 of article 23 of the budget law issued for the island of Cuba for the fiscal year of 1890–91, shall be paid at once to the widow of the employee or to his children, with the condition that this sum shall be repaid in case they shall be given a pension of any kind. This repayment shall be effected by deducting 20 per cent from the monthly payments of the pension.

ART. 90. Those who belong or have belonged in the colonies to corps of militia with military organizations, volunteers of fire department, and who have to their credit six years in the service of said corps, shall be considered at the proper time as possessing the abilities, and may enjoy the privileges which the Peninsular laws grant those who serve or have served in the Army.

ART. 91. Disbursing officers and comptrollers shall, under their personal liability, refuse to pay the salary to employees whose appointment and temporary service are not made in strict compliance with the provisions of this decree-law.

ART. 92. All the laws, regulations, and provisions of a general character, in so far as they conflict with the provisions of this decree-law, are hereby repealed.

ADDITIONAL ARTICLES.

1. The provisions of this decree-law shall be observed without prejudice to the provisions of the law of July 10, 1885, and of the regulations published for its execution, in matters relating to offices reserved for sergeants of the army.

2. The appointments of superior chiefs of administration of secretaries of General Government in the colonial provinces, and of civil governors, are not subject to the series of succession established in this decree law.

TEMPORARY PROVISIONS.

1. The active and passive employees of the colonial provinces shall be subject to the qualification to be made of their ability and conduct.

2. For this purpose a qualification commission of the colonial personnel is created, which shall be composed of one ex-secretary or ex-governor-general of the island of Cuba, Puerto Rico, or the Philippines as president, and of six members, of which three shall be of the class of intendents-general of the treasury, or directors-general of the administration, who shall have been regular incumbents of said offices in the said colonies, and the remaining three of unrestricted appointment. The youngest member of the latter shall perform the duties of secretary.

3. The commission itself, in performing the duties that are intrusted to it, shall adopt such measures as are expedient for the best fulfillment of its work. All the dependencies and offices of the administrative service, both active and passive, shall be obliged to render their assistance to the commission.

Its decisions, whether excluding from or including in the graded lists any employees, shall be final, and, consequently, can not be appealed from. The commission shall not cease to perform its duties until the general graded lists are published after the qualification of employees shall have been completed.

4. The active or suspended colonial employees shall present to the commission their records of service through the chiefs of the dependencies in which they serve or served last. The chiefs shall report in said leaves of service as fully as possible, and in a confidential manner, all matters known about the record and conduct of each employee, for which purpose said chiefs shall take pains to collect, if possible, the necessary data.

5. As fast as the service records are presented they shall be examined by the commission, and the latter shall take pains, whenever it thinks such action necessary, to amplify the data and memoranda facilitating a strict examination of the personal history of each employee.

6. After the personnel has been qualified, the employees with good qualifications shall be arranged in the final graded lists of active and suspended officers in the order of seniority of each category and class. When other conditions are equal, priority shall be given to the employee who has served the longest time in the service of the State, and in case of equality even in this respect, priority shall be given to the employee of greater age.

7. Employees who do not present their records of service within the time fixed by the commission, and those who, after presenting said records, are not favorably qualified, shall not be included in the graded lists, being at once excluded from them, and shall not have a right to serve in the colonial provinces.

8. Until the provisional graded lists treated of in article 38 are published the vacancies that may occur shall be filled by the third, fourth, and fifth series of succession with active or suspended employees possessing the qualifications required by this law, without observance of the preference by right of seniority.

Given at San Sebastián, on October 13, 1890.

MARÍA CRISTINA.

ANTONIO MARIA FABIÉ,
Secretary of the Colonies.

Royal decree of October 31, 1890, containing the regulations for competitive examinations for entering the judicial and public prosecution services.

In view of the reasons stated to me by the secretary of the colonies I decree the following:

ART. 1. Entrance into the judicial and the public prosecution services of the colonial provinces shall be effected through the offices of judges of the promotion category, secretaries, vice secretaries of criminal audiencias, secretaries of courts of examination, *promotores fiscales* of the promotion and the entrance categories, and shall be granted after a competitive examination.

ART. 2. The competitive examinations for filling the positions mentioned in the preceding article shall be called when demanded by the exigencies of the service, and only for the vacancies existing at the time, for both the judicial and the public prosecution services conjointly.

If the number of vacancies does not reach fifty, the examination shall be called for at least that number.

ART. 3. The competitive examinations shall be held for each call in the peninsula, Cuba, Puerto Rico, and the Philippines.

ART. 4. A call for competitive examinations shall be made by the colonial secretary by communicating the proper orders to the general direction of grace and justice of the department and to the respective governors-general of the colonial possessions, and shall be published in the official gacetas.

ART. 5. In filling each fifty vacancies thirty appointments shall be given to peninsular competitors, ten to those of Cuba, five to those of Puerto Rico, and five to those of the Philippines, all the remaining vacancies being distributed in the same manner and proportion.

ART. 6. The periods assigned for presenting petitions for admission to examinations shall be forty-five days for those to be held in the peninsula, and thirty days for those to be held in the Antilles or in the Phillippines, computed from the day following the publication of the call in the respective official gacetas.

ART. 7. In order to be admitted to a competitive examination, a candidate must be a Spaniard, a layman, a licentiate at law from a university subsidized by the State, and must be at least 23 years of age before the day on which the examination exercises begin.

There can not be admitted to the examination:

First. Those physically or mentally unsound.

Second. Those prosecuted for any crime.

Third. Those condemned to any correctional or corporeal punishment.

Fourth. Those who have suffered or undergone a penalty which lowers them in the public esteem.

Fifth. Those who have been discharged provisionally from a criminal prosecution, when they are considered innocent through the lapse of time.

Sixth. Bankrupts who have not been discharged.

Seventh. Insolvent debtors until they are declared freed from debts.

Eighth. Debtors to public funds, as taxpayers.

Ninth. Those who have committed acts and omissions which, though not penal, lower them in the public esteem.

ART. 8. Persons desiring to enter the judicial or the public prosecution services shall accredit to the direction of grace and justice, or to the respective governors general, as the case may be, according as to whether the examinations are to be held in the Peninsula or in the colonies, the qualifications stated in the first part of the preceding article.

Proceedings shall be instituted for each candidate.

The lists of the persons admitted to an examination shall be published in the respective official Gacetas.

ART. 9. The examiners' board for examinations held in the Peninsula shall be composed of the following persons:

The presiding judge of the supreme court, who shall be the president of the board.

The *fiscal* of the supreme court.

Two associate justices of the same court, or of the audiencia of Madrid, appointed by the secretary of the colonies.

The dean of the bar of Madrid.

A lawyer appointed by the secretary of the colonies from among those who pay as such, one of the first three quotas of the industrial subsidy.

A professor of law at the Central University, appointed by the secretary of the colonies.

And one lawyer as secretary, with the right of vote, appointed by the secretary of the colonies.

ART. 10. The examiners' board for examinations to be held in Cuba, Puerto Rico, or the Philippines shall be composed of:

The presiding judge of the audiencia of Habana, Puerto Rico, or Manila, who shall be the president of the respective board.

The *fiscal* of the corresponding audiencia.

One associate justice of an audiencia, appointed by the respective governor-general.

One professor of a university, or an institute, who is a lawyer, appointed by the governor-general.

One councilor of administration, lawyer, or one associate justice of the court of administrative litigation, appointed by the governor-general.

One lawyer appointed by the said governor-general.

One lawyer, as secretary, with a right of vote, appointed by the governor-general.

ART. 11. The members of the examining board other than ex-officio, shall cease to be such when new examinations are held, unless they are reelected.

ART. 12. In cases when the presiding judge or the *fiscal* of the supreme court, the presiding judge or the *fiscal* of the audiencia in question, or the dean of the bar can not attend the examiners' board on account of incompatibility or any other cause, they shall be substituted as follows:

The presiding judge of the supreme court or of the audiencia, by the presiding judge of chamber of the respective court, appointed by the department or by the governor-general, in a proper case.

The *fiscal* of the supreme court, or of the audiencia by the *teniente fiscal* of the same court, and, in his default, by one of the *abogados fiscales* designated by the department or by the respective governor-general.

The dean of the bar by a member of its administrative board, appointed in the same manner.

ART. 13. The list of the competitors admitted to examinations shall be transmitted to the proper court with the proceedings that have taken place.

ART. 14. The appointment of the board judging examinations shall be announced in the official papers on the same day on which the call for the examination is published.

The court shall publish a programme of the examinations within twenty days following said publication. The programme shall also be inserted in the proper official *Gaceta*, and shall include at least 100 questions on each course of lectures in the civil, commercial, and penal laws and the civil and the criminal procedures; 25 questions on each of the courses in the political, administrative, canonical and ecclesiastical disciplinary laws, and 15 questions each on the mortgage, notarial, and civil registry laws.

ART. 15. Before the examinations have begun, the competitors shall be numbered by publicly drawing lots. The person who does not present himself when called for the examination in the order of numbers obtained in drawing lots shall be called the second time after the last one on the list, and if he does not present himself the second time he shall lose his right to take part in the examinations.

ART. 16. The examinations shall be public. The first exercise shall be oral and the second written.

ART. 17. The first exercise shall consist in answering, without previous preparation, fifteen questions drawn by lot in the following proportion:

Two questions in the civil law, two in the penal law, two in the commercial law, two in the civil and criminal procedures, and one for each of the remaining subjects mentioned in article 14.

The time for answering these questions can not exceed one hour and a half.

ART. 18. The second examination shall consist of a compilation of a sentence, resolution, or accusation, in a civil or a criminal matter, as designated by drawing lots.

In order to prepare this work the presidents of the boards shall request of the presiding judges of the respective audiencias a number of proceedings equal to double the number of competitors.

These proceedings, properly modified so as to conceal the part of the work of which the examination shall consist, shall be preserved by the president of the board with the utmost secrecy.

To draft a resolution, accusation, or sentence, of which the exercise shall consist, the competitors shall be separated in rooms designated for the purpose, shall have at their disposal four hours of preparation, and shall be given the legal texts which they may request.

After the four hours have elapsed the competitors must deliver their work in folded sheets in a sealed and signed envelope. When the board convenes each competitor shall open his envelope, read his work, and, after reading the same, shall leave it at the disposal of the president.

ART. 19. At the end of the exercises of each day the board shall immediately, in a secret vote, qualify the work of competitors by using one of the following marks: "Approved" or "Suspended," and shall post the result of this qualification on the door of the room in which the exercises are held. After the completion of all of the exercises the court, in a secret vote, shall qualify the competitors in the numerical order based on their relative merit, and shall submit its recommendation to the secretary of the colonies.

Under no consideration can the number of places announced in a call for an examination be increased. The courts shall abstain from including in their recommendations a number of competitors larger than the number of places for which the examination has been held.

ART. 20. After an examination has ended, the lists and proceedings of each competitor shall be sent to the secretary of the colonies, who shall make appointments from among the approved competitors with the observance of the numerical order in which they are arranged by the board of examiners, and in conformity with the provisions of the articles that follow.

ART. 21. When recommendations of competitors have been received at the department, a graded list of the candidates shall be arranged and published in the official gacetas, subject to the following rules:

The graded list shall begin with the names of the competitors from the Peninsula who occupy the first three numbers on the list; these shall be followed by the names of the candidates who obtained the first number in Cuba, Puerto Rico, and the Philippines, successively, and the same order and proportion shall be observed in the remaining part of the list until the end of the recommendation.

ART. 22. Inferior courts of the entrance category and other positions of the same category which are vacant at the present time, or which

may hereafter become vacant, shall be filled in conformity with th following series of succession:

For the first vacancy appointment shall be made of the candidat who has the lowest number in the graded list of his class.

For the second vacancy appointment shall be made of the *promoto* of the entrance category of the greatest seniority who has one year t his credit in that category.

For the third vacancy appointment shall be made of a suspendec officer of the same category who has solicited appointment.

In default of *promotores* and suspended officers, appointment shall be made of the competitor whose number corresponds to the appointment.

ART. 23. Offices of *promotores* of the entrance category which are now vacant or may become vacant hereafter shall be filled in accordance with the following series of succession:

For the first and second vacancy appointment shall be made of a competitor whose number corresponds to said appointment.

For the third vacancy appointment shall be made of a suspended officer who has solicited appointment or of a competitor whose number corresponds to said appointment.

ART. 24. Offices of judges of the entrance category and their equals, and offices of *promotores* of the entrance category which are vacant at the time of the publication of this decree law, or which may hereafter become vacant, shall be distributed in the following manner:

The former shall be awarded to the competitors occupying the first numbers in the graded list, according to strict order, and in conformity with the provisions of article 19; and the latter shall be awarded to the remaining competitors in the same form and in conformity with the provisions of the preceding article.

ART. 25. Competitors appointed to the Antilles or to the Philippines may accept or refuse the office conferred on them until there occur vacancies of the category in that of the two territories mentioned above which they may prefer.

Those offered appointment as *promotores* of the entrance category may also either accept or refuse the appointment until there occurs a vacancy of the rank of judge of the entrance category, for which vacancy, as in the preceding case, preference shall be given to the competitor who holds a lower number on the graded list.

The privileges given in this article shall be limited to the date of filling of the last position accepted by the appointees voluntarily; and it shall be construed that the candidate who renounces the service, after being appointed the second time in the proper order, does not accept the office for which he has been designated.

ART. 26. The royal decrees of October 26, 1888, and of March 15, 1889, and the royal order of August 8, of the same year, are hereby repealed in so far as they refer to entrance into the judicial and the public prosecution service.

Given at the Palace October 31, 1890.

MARÍA CRISTIANA.

ANTONIO MARÍA FABIÉ,
Secretary of the Colonies.

Alphabetical list of the inferior courts of Cuba, Puerto Rico, and the Philippines, with a statement of their category and audiencia to which each of them belongs.

Inferior court.	Category.	Audiencia to which it belongs.
Abra	Entrance	Manila.
Aguadilla	do	Mayagüez.
Albay	Final	Manila.
Alfonso XII	Entrance	Matanzas.
Antique	do	Cebú.
Arecibo	Promotion	Mayagüez.
Audiencia of Habana (first instance)	Associate justice of the territorial audiencia.	Habana.
Baracoa	Entrance	Santiago de Cuba.
Barotac Viejo	do	Cebú.
Bataam	Final	Manila.
Batanes Islands	Entrance	Do.
Batangas	Final	Do.
Bayamo	Entrance	Santiago de Cuba.
Bejucal	do	Habana.
Binondo de Manila	Final	Manila.
Bohol	Entrance	Cebú.
Bulacán	Final	Manila.
Cagayán	Entrance	Do.
Calamianes	do	Cebú.
Camarines Norte	Promotion	Manila.
Camarines Sur	do	Do.
Cápiz	Entrance	Cebú.
Cárdenas	Promotion	Matanzas.
Cavite	Entrance	Manila.
Cayey	do	San Juan de Puerto Rico.
Cebú	Promotion	Cebú.
Central, of Habana (examination)	Associate justice of the territorial audiencia.	Habana.
Central, of Habana (first instance)	do	Do.
Cienfuegos	Promotion	Santa Clara
Coamo	Entrance	Ponce.
Colón	do	Matanzas.
East of Habana (examination)	Associate justice of the territorial audiencia.	Habana.
East of Habana (first instance)	do	Do.
Guanabacoa	Entrance	Do.
Guanajay	do	Pinar del Río.
Guane	do	Do.
Guantánamo	do	Santiago de Cuba.
Guayama	do	Ponce.
Güines	do	Habana.
Habana. (*See* Audiencia, Central, East, and West of same.)		
Holguín	do	Santiago de Cuba.
Humacao	do	San Juan de Puerto Rico.
Ilo Ilo	Promotion	Cebú.
Ilocos Norte	Final	Manila.
Ilocos Sur	do	Do.
Intramuros, of Manila	do	Do.
Isabela (La)	Entrance	Do.
Island of Negros	do	Cebú.
Islands, Batanes	do	Manila.
Islands, Ladrones (Marianas)	do	Do.
Jaruco	do	Habana.
Ladrones Islands	do	Manila.
Laguna	Final	Do.
La Isabela	Entrance	Do.
Leyte	do	Cebú.
Manila. (*See* Binondo, Intramuros, Quiapo, and Tondo de Manila.)		
Manzanillo	do	Santiago de Cuba.
Marianao	do	Habana.
Marianas Islands	do	Manila.
Matanzas. (*See* North of Matanzas, and South of Matanzas.)		
Mayagüez	Promotion	Mayagüez.
Mindoro	do	Manila.
Misamis	Entrance	Cebú.
Morón	do	Puerto Príncipe.
Negros Island	do	Cebú.
Negros Island	do	Do.
North of Matanzas	Promotion	Matanzas.
North of Santiago de Cuba	Final	Santiago de Cuba.
Nueva Ecija	Promotion	Manila.
Nueva Vizcaya	Entrance	Do.
Oeste. (*See* West.)		
Pampanga	Final	Do.
Pangasinan	do	Do.
Pinar del Río	Promotion	Pinar del Río.

Alphabetical list of the inferior courts of Cuba, Puerto Rico, and the Philippines, with a statement of their category and audiencia to which each of them belongs—Continued.

Inferior court.	Category.	Audiencia to which it belongs.
Ponce	Final	Ponce.
Puerto Príncipe	do	Puerto Príncipe.
Puerto Rico. (*See* San Juan de Puerto Rico.)		
Quiapo, de Manila	do	Manila.
Sagua la Grande	Entrance	Santa Clara.
Samas	do	Cebú.
San Antonio de los Baños	do	Habana.
San Cristóbal	do	Pinar del Río.
San Germán	do	Mayagüez.
San Juan de Puerto Rico (examination)	Final	San Juan de Puerto Rico.
San Juan de Puerto Rico (first instance)	do	Do.
San Juan de los Remedios	Entrance	Santa Clara.
Sancti Spíritus	do	Do.
Santa Clara	Promotion	Do.
Santiago de Cuba. (*See* North and South of same.)		
South of Matanzas	do	Matanzas.
South of Santiago de Cuba	Final	Santiago de Cuba.
Surigao	Entrance	Cebú.
Tarlac	do	Manila.
Tayabas	Promotion	Do.
Tondo, de Manila	Final	Do.
Trinidad	Entrance	Santa Clara.
Unión	Promotion	Manila.
Vega Baja	Entrance	San Juan de Puerto Rico.
West of Habana (examination)	Associate justice of territorial audiencia.	Habana.
West of Habana (first instance)	do	Do.
Zambales	Promotion	Manila.
Zamboanga	Entrance	Cebú.

SUMMARY.

Category of associate justice of a territorial audiencia	7
Final category	19
Promotion category	17
Entrance category	47
Total of courts	90